TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~247~~ 678

MICHAEL REESE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED DECEMBER 4, 1866.

SUPREME COURT OF THE UNITED STATES.

No. 347.

MICHAEL REESE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, in and for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the United States as plaintiffs, and Michael Reese as defendant, a manifest error hath happened, as is alleged, to the great damage of the said defendant, as by his complaint appears, and it being fit, that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the first Monday of December next, in the said Supreme Court to be there and then held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States, should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this sixth day of April, A. D. 1866, and of the independence of the United States the ninety-first.

Witness my hand and the seal of said circuit court, this 10th day of October, A. D. 1866.

[L. S.] GEO. C. GORHAM, *Clerk.*

The above writ of error is hereby allowed.

STEPHEN J. FIELD,
Associate Justice of the U. S. Supreme Court.

2 UNITED STATES OF AMERICA, *District of California, ss:*

The return to this writ of error appears by the schedule hereunto attached.

GEO. C. GORHAM, *Clerk.*
By DAN'L T. SULLIVAN, *Deputy.*

Filed Oct. 10th, 1866.

GEO. C. GORHAM, *Clerk.*
By DAN'L T. SULLIVAN, *Deputy.*

3 THE UNITED STATES OF AMERICA, *ss:*

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington city on the first Monday of December, A. D. 1866, pursuant to a writ of error

filed in the clerk's office of the circuit court of the United States for the district of California, wherein Michael Reese is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this tenth day of October, A. D. 1866, and of the independence of the United States the ninety-first.

STEPHEN J. FIELD,
Associate Justice of U. S. Supreme Court.

To DELOS LAKE, Esq.,
Attorney for the United States, Def'ts in Error.

4 Due and personal service of the within citation on this day is admitted.

S. Francisco, Oct. 10, 1866.

DELOS LAKE, *U. S. Att'y.*

Filed October 10th, 1866.

GEO. C. GORHAM, *Cl'k.*
By DAN'L T. SULLIVAN, *Deputy.*

5 *Complaint.*

In the circuit court of the United States for the districts of California, in and for the northern district thereof.

THE UNITED STATES OF AMERICA
vs.
MICHAEL REESE. } Complaint.

And now, at this day, come the United States of America, by their attorney, Calhoun Benham, and complain of Michael Reese, a citizen of the State of California, and the defendant in the above-entitled cause, and the said United States aver that he, the said defendant, heretofore, to wit, on the 5th day of February, in the year of our Lord one thousand eight hundred and fifty-seven, acknowledge him-
6 self, by his certain recognizance of that date, a copy of which is hereunto annexed, and of this complaint made part, jointly and severally indebted, together with Jose Y. Limantour and Manuel Castro, to the said United States, in the sum of thirty-five thousand dollars, conditioned upon the appearance of the said Jose Y. Limantour, to answer before the circuit court of the said United States for the districts of California, and for the northern district thereof, certain bills of indictment which had heretofore been found against the said Jose Y. Limantour, by the grand inquest of the said United States, within and for the said district, impanelled in and for the said court.

That heretofore, to wit, on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, at
7 a regular term of the said court, begun and holden on Monday, the third day of January, in the year of our Lord one thousand

eight hundred and fifty-nine, the said Jose Y. Limantour was duly called by order of said court to appear and answer to the said bills of indictment, and that the said Jose Y. Limantour did not thereupon appear and answer as require as aforesaid to do.

That thereupon, to wit, on the said twenty-fifth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, the said court, at the term aforesaid, made an order estreating and forfeiting the said recognizance.

Whereby, and by virtue of the said non-appearance of the said Limantour, and the said order estreating and forfeiting the said recognizance, the said defendant became and was indebted to
8 the said United States, severally as well as jointly with the said Limantour and the said Castro, in the said sum of thirty-five thousand dollars, which said sum of thirty-five thousand dollars the said defendant and the said Limantour and the said Castro have each of them neglected and refused to pay, or any part thereof, to the said United States, although often requested so to do, and each and every of them still neglects and refuses to pay the same, or any part thereof.

Wherefore the said United States demand judgment against the said defendant, Michael Reese, for the said sum of thirty-five thousand dollars, with legal interest from the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and fifty-nine and costs of suit.

9 Dated at San Francisco, November 28, A. D. 1860.

CALHOUN BENHAM.
U. S. Att'y N. D. C.

Recognizance.

Circuit court of the United States for the districts of California, northern district of said State.

THE UNITED STATES OF AMERICA:

Be it remembered, that on this fifth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States of America for the districts of California, to take acknowledgments of bail and affidavits, and also to take depo-
10 sitions of witnesses in civil cases depending in the courts of the United States, pursuant to the provisions of the acts of Congress in that behalf, personally came Jose Y. Limantour and Michael Reese and Manuel Castro, who acknowledged themselves to owe to and to be holden and firmly bound unto the United States of America in the full and just sum of thirty-five thousand dollars, to be paid to the said United States of America, to which payment, well and truly to be made, they, the said Jose Y. Limantour and Michael Reese and Manuel Castro, hereby bind themselves, and their and each of their heirs, executors, and administrators, jointly and severally,

firmly by these presents. Whereas at the present term of the circuit court of the United States for the districts of California in and for the northern district of California, now being holden on
11 the ten tenth day of December, in the year of our Lord 1856, the grand inquest of the United States within and for the said district, found a true bill of indictment against the said Jose Y. Limantour, for having uttered and published, and caused to be uttered and published as true, to the board of commissioners appointed to ascertain and settle the private land claims in the State of California, a certain false writing with intent to defraud the United States of America, knowing the same to be false. And whereas at the present term of the aforesaid circuit court in and for the aforesaid district, now being holden on the seventeenth day of January, A. D. 1857, the grand inquest of the United States, within and for the said district, found a true bill of indictment against the said Jose Y.
12 Limantour, for having, on a motion before aforesaid court for a continuance of the trial of him, (the said Jose Y. Limantour,) for the offence charged in the bill of indictment hereinbefore first mentioned, on the eighteenth day of December, A. D. 1856, willfully, corruptly, and knowingly, by his, the said Jose Y. Limantour's, own act and consent committed perjury in swearing before competent authority (in said last-mentioned indictment specified) to a certain false affidavit in writing, to the effect particularly recited in said last-mentioned indictment, he, the said Jose Y. Limantour, knowing the said affidavit to be false. And whereas the said Jose Y. Limantour has been brought before the said circuit court to answer the indictments aforesaid and been committed thereon. And whereas the
13 said circuit court has ordered the said Jose Y. Limantour to be discharged on giving bond with two sureties in the sum of thirty-five thousand dollars each, conditioned for his appearance at the next regular term of the said circuit court of the United States for the northern district of said State, to be held in the city of San Francisco or elsewhere, and for his appearance at any subsequent term of said court, to be hereafter held in said city of San Francisco or elsewhere, then and there to answer all such matters and things as shall be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained. Now, therefore, the condition of this recognizance is such that if if the said Jose Y. Limantour shall personally appear
14 at the next regular term of the said circuit court for the northern district of said State, to be held in the city of San Francisco or elsewhere, and also at any subsequent term of said court to be hereafter held in said city of San Francisco or elsewhere, then and there to answer all such matters and things as shall be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained, then this recognizance to be void; otherwise to remain in full force and effect.

(Signed) LIMANTOUR. [L. S.]
(Signed) MICHAEL REESE. [L. S.]
(Signed) MANUEL CASTRO. [L. S.]

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Michael Reese, being duly sworn, deposes and says, that
15 he is a resident and freeholder within said district; and that he is worth the sum of seventy thousand dollars over and above all his just debts and liabilities.

(Signed) MICHAEL REESE.

Sworn to this 5th day of February, A. D. 1857, before me.

(Signed) CUTLER McALLISTER,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Manuel Castro, being duly sworn, deposes and says, that he is a resident and freeholder within said district, and that he is worth the sum of seventy thousand dollars over and above all his just debts and liabilities.

(Signed) MANUEL CASTRO.

Sworn to this 5th day of February, A. D. 1857, before me.

(Signed) CUTLER McALLISTER,
U. S. Commissioner.

16 The above recognizance taken, signed, and acknowledged before me, this 5th day of February, A. D. 1857.

(Signed) CUTLER McALLISTER,
U. S. Commissioner.

Indorsed: Filed February 5th, 1857.
CUTLER McALLISTER, *D. C.*

17 *Summons.*

UNITED STATES OF AMERICA:
In the circuit court of the United States for the district of California.

THE UNITED STATES, plaintiff,
vs.
MICHAEL REESE, defendant.

Action brought in the said circuit court and the complaint filed in the city and county of San Francisco in the office of the clerk of said circuit court.

The President of the United States of America, greeting:
Michael Reese:

You are hereby required to appear in an action brought
18 against you, by the above-named plaintiff, in the circuit court of the United States for the districts of California, and to file your plea, answer, or demurrer to the complaint filed therein, (a copy of which accompanies this summons,) in the office of the clerk of said court in the city and county of San Francisco, within ten days, (ex-

clusive of Sundays and day of service,) after the service on you of this summons, if served in this county; or if served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to recover the amount of thirty-five thousand dollars alleged due by defendant to plaintiffs, with legal interest from the twenty-fifth day of April, A. D. 1859, and costs of suit; all of which is more particularly set forth in the complaint; and if you fail to appear and plead, answer, or demur as herein
19 required, judgment by default will be entered against you and each of you.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this 30th day of November, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fifth.

Attest: CUTLER McALLISTER, *Clerk.*

OFFICE OF THE MARSHAL OF THE
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within summons on the 30th day of November, A. D. 1860, and personally served the same
20 on the first day of December, A. D. 1860, by delivering to Michael Reese, said defendant, personally, in the city of San Francisco, a copy of said summons attached to a certified copy of the complaint.

Dated San Francisco, this first day of December, A. D. 1860.

P. L. SOLOMON, *Marshal.*

Indorsed: Filed this 19th day of December, A. D. 1860.

CUTLER McALLISTER, *Clerk.*

21 *Demurrer.*

In the circuit court of the United States for the districts of California in and for the northern district thereof.

THE UNITED STATES OF AMERICA, plaintiff,
vs.
MICHAEL REESE, defendant.

The above-named defendant comes and demurs to the plaintiff's complaint filed in the above-entitled cause, and for grounds of demurrer specifies that the facts stated in the complaint in said cause do not constitute a cause of action.

22 Wherefore said defendant prays that said complaint be dismissed, and that said defendant be allowed to go hence, with his costs.

San Francisco, December 17, 1860.

E. CASSERLY, *Att'y for Def't.*

Due service on me this day of a copy of the within demurrer is hereby admitted.
Dec. 17th, 1860.

BENHAM, *U. S. Att'y.*

Indorsed: Dec. 17, 1860.

CUTLER McALLISTER, *Clerk.*

23 *Amended complaint.*

In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES OF AMERICA, plaintiffs,
agt.
MICHAEL REESE, defendant.

Now, at this day, come the United States of America, by William H. Sharp, their attorney, and file this their amended complaint in this action, by leave of the court first had and obtained, against the above-named defendant, Michael Reese, a citizen of the State of California, and for cause of action state as follows: That he, the said de-
24 fendant, heretofore, to wit, on the fifth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, acknowledged himself, by his certain recognizance of that date, a copy of which is hereunto annexed and of this complaint made part, jointly and severally indebted, together with Jose Y. Limantour and Manuel Castro, to the United States in the sum of thirty-five thousand dollars, conditioned upon the appearance of the said Jose Y. Limantour to answer before the circuit court of the said United States for the districts of California, and for the northern district thereof, certain bills of indictment which had theretofore been found against the said Jose Y. Limantour by the grand in-
25 quest of the said United States within and for the said district impanelled in and by the said court, as by the record of the said recognizance remaining in the said court here. That heretofore, to wit, on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, at a regular term of the said court begun and holden on Monday, the third day of January, in the year of our Lord one thousand eight hundred and fifty-nine, the said Jose Y. Limantour was duly called by order of said court to appear and answer the said bills of indictment, and that the said Jose Y. Limantour did not thereupon appear and answer as requested as aforesaid to do, but made default.
26 That thereupon, to wit, on the said twenty-fifth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, the said court, at the term aforesaid, made an order estreating and forfeiting the said recognizance, which said order still remains in full force and effect, and not in any way vacated or reversed.

Whereby, and by virtue of the said non-appearance of the said Limantour and the said order estreating and forfeiting the said recog-

nizance, the said defendant became and was indebted to the said United States, severally as well as jointly with the said Limantour and the said Castro, in the said sum of thirty-five thousand
27 dollars, which said sum of thirty-five thousand dollars the said defendant and the said Limantour and the said Castro have each of them neglected and refused to pay or any part thereof to the said United States, although often requested so to do, and each and every of them still neglects and refuses to pay the same or any part thereof.

Wherefore the said United States demand judgment against the said defendant Michael Reese for the sum of thirty-five thousand dollars, with legal interest from the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and fifty-nine,
28 and costs of suit.

Dated at San Francisco, March 23d, A. D. 1864.

WM. H. SHARP, *U. S. Att'y.*

(Copy.)

The United States of America, circuit court of the United States for the districts of California, northern district of said State.

Be it remembered, that on this 5th day of February, in the year of our Lord one thousand eight hundred and fifty-seven, before me, Cutler McAllister, a commissioner, duly appointed by the cir-
29 cuit court of the United States of America for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil cases depending in the courts of the United States, pursuant to the provisions of the acts of Congress in that behalf, personally came Jose Y. Limantour and Michael Reese and Manuel Castro, who acknowledged themselves to owe to and to be held and firmly bound unto the United States of America in the full and just sum of thirty-five thousand dollars, to be paid to the said United States of America, to which payment, well and truly to be made, they, the said *said* Jose Y. Limantour and Michael Reese and Manuel Castro hereby bind themselves, and their and
30 each of their heirs, executors, and administrators, jointly and severally, firmly by these presents. Whereas, at the present term of the circuit court of the United States for the districts of California in and for the northern district of California, now being holden, on the tenth day of December, in the year of our Lord 1856, the grand inquest of the United States, within and for the said district, found a true bill of indictment against the said Jose Y. Limantour for having uttered and published as true, to the board of commissioners appointed to ascertain and settle the private land claims in the State of California, a certain false writing with intent to defraud the United States of America, knowing the same to be
31 false. And whereas at the present term of the aforesaid circuit court in and for the aforesaid district, now being holden on the seventeenth day of January, A. D. 1857, the grand inquest of the United States within and for the said district found a true bill

of indictment against the said Jose Y. Limantour, for having, on a motion before aforesaid court for a continuance of the trial of him, (the said Jose Y. Limantour,) for the offence charged in the bill of indictment hereinbefore first mentioned, on the eighteenth day December, A. D. 1856, wilfully, corruptly, and knowingly, by his
32 (the said Jose Y. Limantour's) own act and consent, committed perjury in swearing before competent authority (in said last-mentioned indictment specified) to a certain false affidavit in writing to the effect particularly recited in said last mentioned indictment, he (the said Jose Y. Limantour) knowing the said affidavit to be false. And whereas the said Jose Y. Limantour has been brought before the said circuit court to answer the indictments aforesaid, and been committed thereon; and whereas the said circuit court has ordered the said Jose Y. Limantour to be discharged on giving bond with two sureties in the sum of thirty-five thousand dollars each, conditioned
33 for his appearance at the next regular term of the said circuit court of the United States for the northern distict of said State, to be held in the city of San Francisco or elsewhere, and for his appearance at any subsequent term of said court to be hereafter held in said city of San Francisco or elsewhere, then and there to answer all such matters and things as shall be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained. Now, therefore, the condition of this recognizance is such, that if the said Jose Y. Limantour shall personally appear at the next regular term of the said
34 circuit court for the northern district of said State, to be held in the city of San Francisco or elsewhere, and also at any subsequent term of said court to be hereafter held in said city of San Francisco or elsewhere, then and there to answer all such matters and things as shall be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained, then this recognizance to be void; otherwise to remain in full force and effect.

(Signed) LIMANTOUR. [L. S.]
(Signed) MICHAEL REESE. [SEAL.]
(Signed) MANUEL CASTRO. [SEAL.]

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

35 Michael Reese, being duly sworn, deposes and says that he is a resident and freeholder within said district, and that he is worth the sum of seventy thousand dollars over and above all his just debt and liabilities.

(Signed) MICHAEL REESE.

Sworn to this 5th day of February, A, D. 1857, before me.
(Signed) CUTLER McALLISTER,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Manuel Castro, being duly sworn, deposes and says that he is a resident and freeholder within said district, and that he is worth the sum of seventy thousand dollars over and above all his just
36 debts and liabilities.

(Signed) MANUEL CASTRO.

Sworn to this 5th day of February, A. D. 1857, before me.

(Signed) CUTLER McALLISTER,
U. S. Commissioner.

The above recognizance taken, signed, and acknowleged before me this 5th day of February, A. D. 1857.

(Signed) CUTLER McALLISTER,
U. S. Commissioner.

Indorsed: Recognizance to appear and answer.

Filed February 5th, A. D. 1857.

CUTLER McALLISTER, *D. C.*

37 Received a copy of the within amended complaint.
San Francisco, March 28th, 1864.

WM. H. L. BARNES,
Deft's Att'y.

Indorsed: Filed March 23, 1864.

H. C. HYDE, *Clerk.*

38 In the circuit court of the United States, tenth circuit, northern district of California.

THE UNITED STATES OF AMERICA
vs.
MICHAEL REESE.

The United States of America, plaintiffs, by Delos Lake, their attorney, complain of Michael Reese, defendant in this suit, of a plea that he render unto the said plaintiff, the sum of thirty-five thousand dollars which he owes to and from the plaintiffs unjustly obtains.

For that at a term of the circuit court of the United States
39 for the districts of California, in and for the northern district of California, holden on the 10th day of December, in the year of our Lord 1856, at the city and county of San Francisco, in the district aforesaid, the grand jury of the United States within and for the said district found and presented a certain bill of indictment against one Jose Y. Limantour for a felony in having uttered and published, and cause to be uttered and published as true, a certain false writing with intent to defraud the United States of America, knowing the same so be false, as by the said bill of indictment now remaining of record in the said court, reference being thereto had, will more fully appear.

40 And also at a term of the said circuit court of the United States in and for the districts of California, holden in and for the northern district of California, at the city and county of San Francisco, in said district, the grand jury of the United States within and for the said district, on the 17th day of January, 1857, found and presented a certain other bill of indictment against the said Jose Y. Limantour, for the crime of perjury, then lately committed by him in the district aforesaid, as by the said last-named bill of indictment now remaining of record in the said court, will more fully appear, reference being thereto had.

And such proceedings were thereupon had that after-
41 wards, on the 5th day of February, A. D. 1857, in the district aforesaid, the said Limantour was duly arrested and brought before the said circuit court to answer the said indictment.

And thereupon the said court ordered the said Limantour to be discharged on giving bail with two sureties, in the sum of thirty-five thousand dollars each, conditioned for his appearance at the next regular term of the said court for the northern district of California, and for his appearance at any subsequent term of said court to be thereafter held in and for said district, to answer said indictments, and all such matters and things as shall be objected against him, and to abide the order of the court thereon, and not to depart the
42 said court without leave first obtained.

And thereupon the said Limantour and the said defendant, Michael Reese, and one Manuel Castro, to wit, on the 5th day of February, A. D. 1857, in the district aforesaid, appeared before Cutler McAllister, esquire, a commissioner duly appointed and authorized to take acknowledgments of bail and affidavits, pursuant to the acts of Congress in that behalf, in the districts aforesaid, and having full power and authority to recognize the said Limantour with his bail and surety for the appearance of the said Limantour before the said court to answer said indictments, and all such
43 matters and things as should be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained, then the said recognizance to be void, otherwise to remain in full force and effect, which said recognizance was duly taken and acknowledged by and before the said Cutler McAllister, esquire, commissioner as aforesaid, on the day and year aforesaid, and by him duly certified and filed in the office of the clerk of said court on the said 5th day of February, 1857, as by the record of said recognizance and the condition thereof remaining in the said court will more fully appear.

And the plaintiffs aver that at the then next
44 of the said circuit court thereafter holden, to wi
of San Francisco, in the district aforesaid, begu
on the first Monday of July, A. D. 1857, the said Jo
tour, though solemnly called, did not appear according
tion of said recognizance, but wholly neglected and r
pear at the said circuit court, nor did he appear at a
term thereafter held in said district according to th
said recognizance.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Manuel Castro, being duly sworn, deposes and says that he is a resident and freeholder within said district, and that he is worth the sum of seventy thousand dollars over and above all his just
36 debts and liabilities.

(Signed) MANUEL CASTRO.

Sworn to this 5th day of February, A. D. 1857, before me.

(Signed) CUTLER McALLISTER,
U. S. Commissioner.

The above recognizance taken, signed, and acknowleged before me this 5th day of February, A. D. 1857.

(Signed) CUTLER McALLISTER,
U. S. Commissioner.

Indorsed: Recognizance to appear and answer.

Filed February 5th, A. D. 1857.

CUTLER McALLISTER, *D. C.*

37 Received a copy of the within amended complaint.
San Francisco, March 28th, 1864.

WM. H. L. BARNES,
Deft's Att'y.

Indorsed: Filed March 23, 1864.

H. C. HYDE, *Clerk.*

38 In the circuit court of the United States, tenth circuit, northern district of California.

THE UNITED STATES OF AMERICA
vs.
MICHAEL REESE.

The United States of America, plaintiffs, by Delos Lake, their attorney, complain of Michael Reese, defendant in this suit, of a plea that he render unto the said plaintiff, the sum of thirty-five thousand dollars which he owes to and from the plaintiffs unjustly obtains.

For that at a term of the circuit court of the United States
39 for the districts of California, in and for the northern district of California, holden on the 10th day of December, in the year of our Lord 1856, at the city and county of San Francisco, in the district aforesaid, the grand jury of the United States within and for the said district found and presented a certain bill of indictment against one Jose Y. Limantour for a felony in having uttered and published, and cause to be uttered and published as true, a certain false writing with intent to defraud the United States of America, knowing the same so be false, as by the said bill of indictment now remaining of record in the said court, reference being thereto had, will more fully appear.

40 And also at a term of the said circuit court of the United States in and for the districts of California, holden in and for the northern district of California, at the city and county of San Francisco, in said district, the grand jury of the United States within and for the said district, on the 17th day of January, 1857, found and presented a certain other bill of indictment against the said Jose Y. Limantour, for the crime of perjury, then lately committed by him in the district aforesaid, as by the said last-named bill of indictment now remaining of record in the said court, will more fully appear, reference being thereto had.

41 And such proceedings were thereupon had that afterwards, on the 5th day of February, A. D. 1857, in the district aforesaid, the said Limantour was duly arrested and brought before the said circuit court to answer the said indictment.

And thereupon the said court ordered the said Limantour to be discharged on giving bail with two sureties, in the sum of thirty-five thousand dollars each, conditioned for his appearance at the next regular term of the said court for the northern district of California, and for his appearance at any subsequent term of said court to be thereafter held in and for said district, to answer said indictments, and all such matters and things as shall be objected against him, and to abide the order of the court thereon, and not to depart the

42 said court without leave first obtained.

And thereupon the said Limantour and the said defendant, Michael Reese, and one Manuel Castro, to wit, on the 5th day of February, A. D. 1857, in the district aforesaid, appeared before Cutler McAllister, esquire, a commissioner duly appointed and authorized to take acknowledgments of bail and affidavits, pursuant to the acts of Congress in that behalf, in the districts aforesaid, and having full power and authority to recognize the said Limantour with his bail and surety for the appearance of the said Limantour before the said court to answer said indictments, and all such

43 matters and things as should be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained, then the said recognizance to be void, otherwise to remain in full force and effect, which said recognizance was duly taken and acknowledged by and before the said Cutler McAllister, esquire, commissioner as aforesaid, on the day and year aforesaid, and by him duly certified and filed in the office of the clerk of said court on the said 5th day of February, 1857, as by the record of said recognizance and the condition thereof remaining in the said court will more fully appear.

44 And the plaintiffs aver that at the then next regular term of the said circuit court thereafter holden, to wit, at the city of San Francisco, in the district aforesaid, begun and holden on the first Monday of July, A. D. 1857, the said Jose Y. Limantour, though solemnly called, did not appear according to the condition of said recognizance, but wholly neglected and refused to appear at the said circuit court, nor did he appear at any subsequent term thereafter held in said district according to the condition of said recognizance.

And afterwards, to wit, on the 25th day of April, in the year of Lord 1859, at a regular term of said court begun and holden
45 on Monday, the third day of January, A. D. 1859, the said Limantour, although solemnly called, did not appear according to the condition of said recognizance, but wholly neglected and refused to appear at the said circuit court, nor did he appear at any subsequent term thereafter held in said district according to the condition of said recognizance.

And afterwards, to wit, on the 25th day of April, in the year of our Lord 1859, at a regular term of said court begun and holden on Monday, the third day of January, A. D. 1859, the said Limantour, although solemnly called, did not appear according to the condition of said recognizance, but wholly neglected and refused to appear
46 at the said court, and made default as by the record of said court, reference being thereto had will more fully appear.

And thereupon the said court, at the term last aforesaid, made an order forfeiting and estreating the said recognizance.

Whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of thirty-five thousand dollars, above demanded.

Nevertheless the said defendant (although often requested so to do) has not yet paid the said sum above demanded, or any part thereof to the said plaintiffs, but has hitherto wholly refused, and still does refuse, to pay the same, or any part thereof.

47 Wherefore the plaintiffs demand judgment against the said defendant for the sum of thirty-five thousand dollars, with interest and costs of suit.

DELOS LAKE, *U. S Att'y.*

Service of a copy of the within second amended complaint is hereby admitted.

July 13, 1865.

Indorsed: Filed July 13, 1865.

GEO. C. GORHAM, *Clerk.*
By HUESTIS, *Deputy.*

Stipulation.

48 U. S. circuit court, tenth circuit.

THE UNITED STATES }
vs.
MICHAEL REESE. }

It is hereby stipulated that the plaintiff's attorney may amend the complaint at any time within five days from this date; the defendant to have ten days after service of copy to plead or demur.

July 10, 1865.

DELOS LAKE, *U. S. Att'y.*
WM. H. L. BARNES, *for Def't.*

Indorsed: Filed July 10th, 1865.

GEO. C. P. GORHAM, *Cl'k.*
By DANL. T. SULLIVAN, *Deputy.*

49 In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES OF AMERICA,
vs.
MICHAEL REESE, defendant.

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

And now comes the defendant, Michael Reese, by William H. L. Barnes, his attorney, and demurs to the amended complaint of the United States of America, plaintiff in this action, and states and shows the following grounds of demurrer, to wit:

First. That the said complaint does not state facts sufficient
50 to constitute a cause of action in this:

1. That it appears on the face of the complaint that the indictment mentioned in the pretended recognizance referred to in the said complaint was for an offence not known to the laws of the United States.

2. That it appears on the face of the said complaint that the said recognizance is void and of no legal effect whatever, because the same is not alleged to have been ever duly filed or made a record of the said circuit court, and for other reasons.

WM. H. L. BARNES, *Att'y for Def't.*

51 Service of a copy of the within demurrer is this day admitted.

San Francisco, April 29, 1865.

Filed April 29, 1865.

GEO. C. GORHAM, *Cl'k.*
P'r W. F. HUESTIS, *Dep. Clerk.*

52 *Stipulation.*

Circuit court of the United States, tenth circuit in and for the northern district of California.

THE UNITED STATES
vs.
MICHAL REESE.

In this cause it is stipulated and agreed by and between the neys of the respective parties, plaintiff and defendant, as follo

The defendant having pleaded the general issue in this c may, under such plea, give evidence on trial of the cause of ter of defence which he may lawfully have herein, or raise

or question as to matter of fact, or of law, of ar
53 whatever, as precisely, fully, and in the same manne

said matter of defence or question of fact or law ha him taken advantage of by special plea, or by demurrer, c

And afterwards, to wit, on the 25th day of April, in the year of Lord 1859, at a regular term of said court begun and holden
45 on Monday, the third day of January, A. D. 1859, the said Limantour, although solemnly called, did not appear according to the condition of said recognizance, but wholly neglected and refused to appear at the said circuit court, nor did he appear at any subsequent term thereafter held in said district according to the condition of said recognizance.

And afterwards, to wit, on the 25th day of April, in the year of our Lord 1859, at a regular term of said court begun and holden on Monday, the third day of January, A. D. 1859, the said Limantour, although solemnly called, did not appear according to the condition of said recognizance, but wholly neglected and refused to appear
46 at the said court, and made default as by the record of said court, reference being thereto had will more fully appear.

And thereupon the said court, at the term last aforesaid, made an order forfeiting and estreating the said recognizance.

Whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of thirty-five thousand dollars, above demanded.

Nevertheless the said defendant (although often requested so to do) has not yet paid the said sum above demanded, or any part thereof to the said plaintiffs, but has hitherto wholly refused, and still does refuse, to pay the same, or any part thereof.

47 Wherefore the plaintiffs demand judgment against the said defendant for the sum of thirty-five thousand dollars, with interest and costs of suit.

DELOS LAKE, *U. S Att'y.*

Service of a copy of the within second amended complaint is hereby admitted.

July 13, 1865.

Indorsed: Filed July 13, 1865.

GEO. C. GORHAM, *Clerk.*
By HUESTIS, *Deputy.*

Stipulation.

48 U. S. circuit court, tenth circuit.

THE UNITED STATES }
vs.
MICHAEL REESE. }

It is hereby stipulated that the plaintiff's attorney may amend the complaint at any time within five days from this date; the defendant to have ten days after service of copy to plead or demur.

July 10, 1865.

DELOS LAKE, *U. S. Att'y.*
WM. H. L. BARNES, *for Def't.*

Indorsed: Filed July 10th, 1865.

GEO. C. P. GORHAM, *Cl'k.*
By DANL. T. SULLIVAN, *Deputy.*

49 In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES OF AMERICA,
vs.
MICHAEL REESE, defendant.

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

And now comes the defendant, Michael Reese, by William H. L. Barnes, his attorney, and demurs to the amended complaint of the United States of America, plaintiff in this action, and states and shows the following grounds of demurrer, to wit:

First. That the said complaint does not state facts sufficient
50 to constitute a cause of action in this:

1. That it appears on the face of the complaint that the indictment mentioned in the pretended recognizance referred to in the said complaint was for an offence not known to the laws of the United States.

2. That it appears on the face of the said complaint that the said recognizance is void and of no legal effect whatever, because the same is not alleged to have been ever duly filed or made a record of the said circuit court, and for other reasons.

WM. H. L. BARNES, *Att'y for Def't.*

51 Service of a copy of the within demurrer is this day admitted.

San Francisco, April 29, 1865.

Filed April 29, 1865.

GEO. C. GORHAM, *Cl'k.*
P'r W. F. HUESTIS, *Dep. Clerk.*

52 *Stipulation.*

Circuit court of the United States, tenth circuit in and for the northern district of California.

THE UNITED STATES
vs.
MICHAL REESE.

In this cause it is stipulated and agreed by and between the attorneys of the respective parties, plaintiff and defendant, as follows:

The defendant having pleaded the general issue in this cause, he may, under such plea, give evidence on trial of the cause of any matter of defence which he may lawfully have herein, or raise any issue or question as to matter of fact, or of law, of any nature
53 whatever, as precisely, fully, and in the same manner as if the said matter of defence or question of fact or law had been by him taken advantage of by special plea, or by demurrer, or by any

other proceeding known to the law or allowed by the rules and practice of this court.

Dated San Francisco, Oct. 23, 1865.

E. CASSERLY & W. H. L. BARNES,
For Def't.

DELOS LAKE, *U. S. Att'y.*

Indorsed: Filed June 21, 1866.

GEO. C. GORHAM, *Clerk.*

54 *Stipulation.*

U. S. Circuit court, dist. of California.

THE UNITED STATES
vs.
MICHAEL REESE.

Stipulated in this case that jury is waived, and that the same be tried by the court.

Dated San Francisco, June 22d, 1866.

DELOS LAKE,
U. S. Dist. Att'y.

E. CASSERLY & BARNES,
For Def't.

Indorsed: Filed June 22, 186 .

GEO. C. GORHAM, *Clerk.*

55 In the circuit court of the United States of America, tenth judicial circuit, in and for the northern district of California.

THE UNITED STATES
vs.
MICHAEL REESE.

And the said defendant, Michael Reese, by his attorney W. H. L. Barnes, comes and defends the wrong and injury, when, &c., and says that he does not owe the said sum of thirty-five thousand dollars in the complaint in the above-entitled action demanded, or any
56 part thereof, in manner and form as the said plaintiff hath thereof complained against him, and of this the said defendant puts himself upon the country, &c.

E. CASSERLY & W. H. L. BARNES,
For Deft.

Indorsed: Filed June 6, 1866.

GEO. C. GORHAM, *Cl'k.*

57 THE UNITED STATES
vs.
M. REESE.

And now come the said parties as before, and the argument of counsel being further heard, the said cause is submitted to the court.

A true copy from the minutes.

GEO. C. GORHAM, *Clerk.*

Indorsed: Filed June 28, 1866.

GEO. C. GORHAM, *Clerk.*

58 In the circuit court of the United States, northern district of California.

THE UNITED STATES
vs.
MICHAEL REESE.

This cause having been heretofore called on for trial by the court, without the intervention of a jury, by the stipulation in writing of the attorneys of the respective parties filed with the clerk, Delos Lake, esq., United States district attorney, appeared as counsel for the plaintiffs, and Eugene Casserly, esq., and W. H. L. Barnes, esq., appeared as counsel for the defendant; and the testi-
59 mony of the respective parties was produced, and counsel having been heard thereon, the court took the same under consideration, and now, this day, having duly, considered the same, the court finds that there is due and owing to the plaintiffs by the said defendant, upon the recognizance in suit, the sum of thirty-five thousand dollars.

Judgment is therefore ordered for the plaintiffs, the United States, against the defendant, Michael Reese, for the sum of thirty-five thousand dollars and cost.

FIELD, *J.*

September 26, 1866.

Filed Sept. 26, 1866.

GEO. C. GORHAM, *Clerk.*

60 Circuit court of the United States, northern district of California.

THE UNITED STATES
vs.
MICHAEL REESE.

This cause having been heretofore called on for trial by the court, without the intervention of a jury, by the stipulation in writing of the attorneys of the respective parties, filed with the clerk, Delos Lake, esq., United States district attorney, appeared as counsel for the plaintiff, and Eugene Casserly, esq., and W. H. L. Barnes, esq., appeared as counsel for the defendant; and the testimony of
61 the respective parties was produced, and counsel having been heard thereon, the court took the same under consideration, and having duly considered the same, the court afterwards, to wit, on the 26th day of September, 1866, filed its findings, by which it appears that there is due and owing to the plaintiffs by the said defendant, upon the recognizance in suit, the sum of thirty-five thousand dollars, and the court having subsequently, to wit, on the 9th day of October, 1866, ordered that judgment be entered in accordance with said findings. Now, therefore, by reason of the law and the findings, it is ordered and adjudged that the said plaintiffs do
62 have and recover of and from the said defendant the sum of

thirty-five thousand dollars, together with their costs of suit, taxed at fifty-one and $\frac{50}{100}$ ($51 50) dollars.

A true copy of the judgment.

Attest: GEO. C. GORHAM, *Clk.*
By S. NEALL, *D. C.*

63 *Bill of exceptions.*

In the circuit court of the United States for the districts of California.

THE UNITED STATES
vs.
MICHAEL REESE.

Be it remembered that, on the trial of this action the plaintiff, in order to sustain the issue on its part, produced and offered in evidence a certain writing obligatory, purporting to be a joint and several recognizance of bail in the words and figures following:

THE UNITED STATES OF AMERICA:

Circuit court of the United States for the districts of California, northern district of said State.

Be it remembered that, on this 5th day of February, in the
64 year of our Lord one thousand eight hundred and fifty-seven, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States of America for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil cases depending in the courts of the United States, pursuant to the provisions of the acts of Congress in that behalf, personally came Jose Y. Limantour and Michael Reese and Manuel Castro, who acknowledged themselves to owe, and to be held, and firmly bound unto the United States of America in the full and just sum of thirty-five thousand dollars, to be paid to the said United States of America, to which
65 payment, well and truly to be made, they, the said Jose Y. Limantour and Michael Reese and Manuel Castro, hereby bind themselves, and their and each of their heirs, executors, and administrators, jointly and severally, firmly by these presents.

Whereas, at the present term of the circuit court of the United States for the districts of California, now being holden on the tenth day of December, in the year of our Lord 1856, the grand inquest of the United States, within and for the said district, found a true bill of indictment against the said Jose Y. Limantour for having uttered and published, and caused to be uttered and published, as true, to the board of commissioners appointed to ascertain and set-
66 tle the private land claims in the State of California, a certain false writing, with intent to defraud the United States of America, knowing the same to be false; and whereas, at the present term of the aforesaid circuit court in and for the aforesaid district, now being holden on the seventeenth day of January, A. D. 1857,

the grand inquest of the United States within and for the said district found a true bill of indictment against the said Jose Y. Limantour for having on a motion before aforesaid court for a continuance of the trial of him, (the said Jose Y. Limantour,) for the offence charged in the bill of indictment hereinbefore first mentioned, on the eighteenth day of December, A. D. 1856, wilfully, corruptly, and knowingly, by his (the said Jose Y. Limantour's) own act
67 and consent, committed perjury in swearing before competent authority (in said last-mentioned indictment specified) to a certain false affidavit in writing, to the effect particularly recited in said last-mentioned indictment, he (the said Jose Y. Limantour) knowing the said affidavit to be false; and whereas the said Jose Y. Limantour has been brought before the said circuit court to answer the indictment aforesaid and been committed thereon; and whereas the said circuit court has ordered the said Jose Y. Limantour to be discharged on giving bond with two sureties, in the sum of thirty-five thousand dollars each, conditioned for his appearance at the next regular term of the said circuit court of the Uni-
68 ted States for the northern district of said State, to be held in the city of San Francisco or elsewhere, and for his appearance at any subsequent term of said court to be hereafter held in the said city of San Francisco or elsewhere, then and there to answer all such matters and things as shall be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained. Now, therefore, the condition of this recognizance is such that if the said Jose Y. Limantour shall personally appear at the next regular term of the said circuit court for the northern district of said State, to be held in the
69 city of San Francisco or elsewhere, and also at any subsequent term of said court to be hereafter held in said city of San Francisco or elsewhere, then and there to answer all such matters and things as shall be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained, then this recognizance to be void; otherwise to remain in full force and effect.

(Signed) LIMANTOUR. [L. S.]
(Signed) MICHAEL REESE. [L. S.]
(Signed) MANUEL CASTRO. [L. S.]

And the plaintiff at the same time produced and offered in evi-
70 dence an order of said circuit court, made and entered February 4th, 1857, in both of said indictments, and the actions thereon, to the effect that said Limantour be discharged on giving bail, with two sureties, in $35,000 each, conditioned for his appearance in the manner and with the conditions expressed in the said recognizance of bail as hereinbefore set forth; under which order of court said recognizance was taken.

And also another order of the said circuit court made and entered April 25th, 1859, entitled in both indictments, purporting to forfeit the said recognizance, in substance as follows:

Now at this day, &c., ordered, that said Jose Y. Limantour be called to appear, &c., upon the said indictments and stand his
71 trials thereon, and so save his recognizance, &c., and his sureties thereon; and the said Limantour being solemnly called, &c., did not appear, and answer, and stand his trials thereon, but made default; wherefore it is ordered, &c., that the recognizance in these causes heretofore given by said Limantour be estreated and forfeited, and that the United States have leave to proceed to recover the amount thereof from the said Limantour and his sureties thereon, viz: Michael Reese and Manuel Castro, or from any or either of them.

The defendant, by his counsel, then and there objected to receiving the said recognizance in evidence, on the following grounds:

First. The said recognizance on its face was taken under
72 two indictments found by the grand jury of the United States for the northern district of California; the first of which indictments was for an act which at the time of the alleged commission thereof, or of the finding of said indictment, was not a crime or offence against the United States, within the jurisdiction of the said grand jury to inquire into, or to indict the said Limantour for the same.

Second. That the second of said two indictments was for an alleged perjury committed in an action or an indictment for an act, which at the time of the alleged commission thereof was not within the jurisdiction of the said grand jury to inquire into, or to
73 indict said Limantour for the same.

Third. That said second indictment was for an act which was not a crime within the jurisdiction of the said grand jury to inquire into, or to indict said Limantour for the same.

Fourth. That said recognizance was inadmissible in evidence on all the said first, second, and third grounds.

Fifth. That the first of said two indictments was for an act which, at the time of its alleged commission or of the finding of said indictment, was not a crime or offence against the United States, within the jurisdiction of the said circuit court to try and determine.

Sixth. That the second of said indictments was for an alleged perjury in an action on an indictment for an act which, at the
74 time of its alleged commission or of the indictment therefor, was not a crime or offence against the United States, within the jurisdiction of the said circuit court to try and determine.

Seventh. That said second indictment is for an act which was not a crime within the jurisdiction of the said circuit court to try and determine.

Eighth. That said recognizance was inadmissible in evidence on all the said fifth, sixth, and seventh grounds.

Ninth. The said recognizance, on its face, was taken under two separate indictments, and in two distinct actions for the aggre-
75 gate sum of the bail required of said Limantour, in both indictments, and the actions thereupon respectively.

Tenth. That said recognizance as to the condition thereof being

for the appearance of said Limantour generally, and not on the said indictments, or either of them, was excessive and otherwise illegal in its terms, and thus and otherwise beyond the jurisdiction of the said circuit court, or of the said United States commissioner, to require or to take respectively, and the said recognizance was invalid and void.

Eleventh. That said recognizance was in other respects invalid and void as an obligation of the defendant, and insufficient to ena-
76 ble the plaintiff to maintain its said action.

And the said defendant then and there also objected to the said orders of the said circuit court of February 4th, 1857, and April 25th, 1859, severally and respectively, as the same were offered in evidence, on each of the said grounds severally, from first to eleventh inclusive, above stated.

Which said objections to receiving in evidence the said recognizance, and said orders and proceedings of the said circuit court, made and had of February 4th, 1857, and April 25th, 1859, thereupon, were severally overruled by the court, and said recognizance, orders, and proceedings were admitted and read in evidence.
77 To which rulings of the court, and each of them, as the same were made and given respectively, the defendant then and there duly excepted.

Plaintiff having given said evidence, which was the whole by it given, rested its case.

The defendant, in order to sustain the issue on his part, then offered and read in evidence the two indictments specified in said recognizance, as follows:

1st. An indictment found by the grand jury of the United States within and for the northern district of California, on the tenth day of September, A. D. 1856, against Jose Y. Limantour.

In said indictment the alleged crime is charged in substance
78 as follows:

"That Jose Y. Limantour, &c., on February 3, 1853, at, &c., and within the jurisdiction of this court, did utter and publish as true to the board of commissioners appointed to ascertain and settle the private land claims in the State of California, under the act of Congress, entitled 'An act to ascertain and settle the private land claims in the State of California,' approved March 3, 1851, a certain false writing, with intent to defraud the United States, knowing the same to be false, to wit, a certain false writing, purporting to be a grant to him, the said Jose Y. Limantour, of the following de-
79 scribed tracts of land. (describing them by metes and bounds.) located, &c., in the department of the Californias, which said false writing purports to have been given and executed in the town of Los Angeles, in the said department of the Californias, on said February 27, 1843, under the authority of the Mexican government, by the citizen Manuel Micheltorena, &c., governor and commandant general, &c., and to have been approved and ratified by the supreme provincial government of the republic of Mexico on April 18, 1843, which said approval and ratification is signed 'Bocane-

gra.' Whereas in truth, &c., the said false writing was made afterwards. &c., on September 1, 1852, at the city of Mexico, &c.,
80 and then and there signed by the said Micheltorena and the said Bocanegra, after that portion of the department of the Californias in which said lands were located, to wit, Upper California, had ceased to pertain to the Mexican republic, and after the said Upper California had become one of the United States of America. All of which facts said, &c., Limantour, then and there, &c., well knew, contrary to the form of the statutes of the United States in such case made, &c."

Said indictment contained three other counts alleging the same facts, without material difference, and concluding "against the form of the statute," &c. Two of said counts set out copies of the
81 alleged forged title papers, which were in the usual form of such documents, as issued by the Mexican government in its grants of land in California.

2d. An indictment found by the grand jury of the United States within and for the northern districts of California, on January 17, 1857, against Jose Y. Limantour.

This indictment, which is for alleged perjury, contains three counts substantially the same, and shows by very full and particular allegations such "perjury" to have been committed by Limantour in an "affidavit in writing," (in another count "a deposition in writing,") made by him before the deputy clerk of the circuit court, (in
82 another court sworn "before the judges of the circuit court,") "which affidavit" or "deposition" was to the effect that the title papers presented by him before the board of land commissioners were genuine and what they purported to be, and was used by him on a motion for a continuauce of the case against him in the circuit court in December, 1856, on the previous indictment last hereinbefore mentioned, the tenor of which is fully set forth in this second indictment.

And the said defendant then and there insisted and requested the court to hold as to each of the said two foregoing indictments respectively, and also as to both of them as follows:
83 That the acts therein charged against the said Limantour were not, at the date of their alleged commission by him, a crime or offence within the jurisdiction of the said grand jury to inquire into or indict for.

That said acts were not a crime or offence within the jurisdiction of said circuit court to try and determine.

And also as to second indictment, that the alleged perjury was committed in an action in said court upon said first indictment, of which said court had no jurisdiction to try and determine the same.

And, therefore, on all said grounds, and each of them severally, that the said recognizance in this action sued on was and is
84 invalid and void, and insufficient to maintain said action.

But the said court then and there held that, notwithstanding said objections, the said recognizance was good and sufficient to

entitle the plaintiff to recover; to all which the defendant duly excepted.

The defendant then put in evidence certain orders and proceedings of said circuit court, &c., in and for the northern district of California, in the matter of and relating to said indictments, and each of them, and said recognizance; and being, with the orders put in evidence by the plaintiff, as hereinbefore set forth, all the orders and proceedings of said court in the premises, which certain orders and proceedings were as follows:

Indictment for uttering and publishing a false writing, knowing the same to be false.

At a stated term, &c., Dec. 10th, 1856.

85 Present: Hon. M. Hall McAllister.

And now, &c., come the grand jurors, &c., into court, and through their foreman do present the following bill of indictment, to wit:

THE UNITED STATES
vs.
JOSE Y. LIMANTOUR.

SAN FRANCISCO, *Dec.* 10, 1856.

A true bill.

RICHARD ROMAN, *Foreman.*

On motion of the U. S. dist. att'y, it was ordered that a bench warrant be issued on the foregoing indictment for the arrest of the said defendant, Jose Y. Limantour.

And now at this day came the U. S. dist. att'y and the defendant, Jose Y. Limantour, with his counsel, into court; and the said

86 Jose Y. Limantour, on motion, &c., having been duly arraigned, &c., the said indictment having been read to said defendant in open court, he thereupon pleads, &c., "not guilty" of the offence charged in said indictment, and the United States, &c., say he is guilty, &c.; whereupon issue is joined. Also, at the same day, on motion of the defendant's attorney to admit said defendant to bail, it is ordered by the court that the said Jose Y. Limantour find sufficient sureties in the sum of thirty thousand dollars for his appearance at the present term, &c., of the said circuit court, &c., and for his appearance at any subsequent term of said court to be hereafter held until duly discharged; and that in default of finding such bail, the said Jose Y. Limantour should stand committed for trial; and also the following:

Indictment for forgery.

At a special term, &c., on Monday, August 24th, 1859.
87 Present: Hon. M. Hall McAllister; Hon. Ogden Hoffman.

THE UNITED STATES OF AMERICA
vs.
JOSE Y. LIMANTOUR. } No. 12.

Indictment for perjury.

THE UNITED STATES OF AMERICA
vs.
JOSE Y. LIMANTOUR. } No. 13.

And now, &c., come the United States district attorney, on behalf of the United States, and Messrs. Whitcomb, Pringle, and
88 Felton, and Hall McAllister, esq., on behalf of the defendant, Jose Y. Limantour; and on motion of the U. S. dist. attorney, and on filing the following stipulation in words and figures, to wit:

Indictment for forgery.

Circuit court of the United States for the districts of California in and for the northern district.

UNITED STATES OF AMERICA
vs.
JOSE Y. LIMANTOUR. } No. 12.

Indictment for perjury.

UNITED STATES OF AMERICA
vs.
JOSE Y. LIMANTOUR. } No. 13.

It is hereby stipulated and agreed by and between the un-
89 dersigned, that the application for a postponement of the trials of the above-entitled actions to be this day made by the dist. att'y on behalf of the United States, be, and the same is hereby, consented to by the defendant. But this consent is based upon the distinct agreement that the trial of said sections, or of either of them, shall at no time hereafter be brought, or until after final decrees have been rendered by the district court of the United States in and for the northern district of California, in two certain cases now pending in said district court on appeal from the board of United States
90 land commissioners, and respectively entitled "United States *vs.* Jose Y. Limantour, No. 424, and United States *vs.* Jose Y. Limantour, No. 429;" and in case both or either of said decrees should be in favor of the aforesaid claimant, Jose Y. Limantour, it is hereby distinctly agreed that said two aforesaid criminal actions, viz: numbers 12 and 13, shall be forthwith dismissed by the United States; and in case said decrees should be against said claimant, then,

and in that event, reasonable time is to be given to him, the said Jose Y. Limantour, to prepare for the trial of said criminal actions, Nos. 12 and 13, and to procure the attendance of such of his
91 witnesses as reside without the limits of the State of California.

It is further stipulated that this agreement be entered upon the minutes of the aforesaid circuit court, as the condition of the above postponement.

P. DELLA TORRE, *U. S. Att'y.*
WHITCOMB, PRINGLE, FELTON,
HALL McALLISTER, *Attorneys for Defendant.*

San Francisco, Aug. 24, 1857.

It is ordered by the court that the trial of the two causes aforesaid be postponed according to the terms of said stipulation.

And also the following:

92 At a regular term, &c., March 9th, 1859.

Present: Hon. M. Hall McAllister, U. S. cir. judge; Hon. Ogden Hoffman, U. S. dist. judge.

THE UNITED STATES *vs.* JOSE Y. LIMANTOUR. } Criminal calendar.

And now, &c., came the parties, &c., and the motion to set cause for trial was duly argued and submitted to the court.

Court adjourned until to-morrow the 10th day of March, A. D. 1859, at 11 o'clock a. m.

93 And also the following:

At a regular term, &c., March 26, 1859.

Present: Hon. M. Hall McAllister, U. S. dist. judge.

Indictment for uttering and publishing certain false papers.

THE UNITED STATES *vs.* JOSE Y. LIMANTOUR. } Criminal calendar.

And now, &c., the motion heretofore made by P. Della Torre, esq. U. S. att'y, that a day be fixed for the trial of the above-named defendant, having been argued by the respective counsel and submitted for the consideration of the court, and due deliberation being
94 had in the premises, it is ordered that Monday, the 25th day of April next, be fixed for the trial of the above-named defendant, indicted for uttering and publishing and causing to be uttered and published a certain false writing, purporting to be a grant of lands in California; provided the said 25th day of April next be a day of jurisdiction, and if not, the next day of jurisdiction thereafter.

Same order made on same day in action upon the indictment for perjury.

95 It was then proven that the district court of the United States within and for the northern district of California, did, on the 19th day of November, A. D. 1858, in the two civil cases, respectively, of Jose Y. Limantour *vs.* the United States, referred to in the said stipulation and order made at the August term, 1857, of said circuit court hereinbefore set forth postponing the trial of said Jose Y. Limantour upon the said indictments, render its decrees, whereby said district court rejected the claims of said Jose Y. Limantour in said land cases, respectively.

The defendant's counsel then called as a witness one John B. Felton, who, being sworn, testified:

96 I was one of the counsel of Limantour in the matter of the indictments in evidence here. I was present in court as his counsel, and entered into the stipulation made at the August term, 1857. Limantour was then present in court with his witnesses, ready and anxious to be tried upon the indictments. The district attorney urged a postponement of the trial. Limantour had been to Mexico, procured his witnesses, and brought them back with him, expecting and desiring a trial at that term. The witnesses were obliged to return to Mexico at once. The witness further testified that it was fully understood by all parties, that if the stipulation should be made, that Limantour and his witnesses would return to Mexico, and

97 remain there until the civil cases in the United States district court were finally disposed of, and that Limantour should afterwards have time enough allowed him to notify and get his witnesses, and return here with them.

The witnesses then (after the stipulation and order) returned at once to Mexico, and Limantour followed them after two or three months' delay. He never afterwards returned to California. He had already, previous to the stipulation, been there once for his witnesses, since the finding of the indictments, and had returned with them, and had them ready for trial.

The defendant then offered to prove that the said stipulation was for the express purpose of enabling Limantour and his witnesses to leave California and go to Mexico.

98 The plaintiffs' counsel objected to the introduction of this evidence; and the same was by the court rejected as inadmissible; to which the defendant duly excepted.

The witness then further testified that the sureties on the recognizance had nothing to do with the stipulation in any way, and knew nothing of it.

The defendant, by his counsel, then and there insisted and requested the court to hold, that the several matters so produced and given in evidence by the said stipulation, and the orders and proceedings of the said circuit court thereupon, and the said tes-

99 timony of John B. Felton, were sufficient and ought to be admitted and allowed to discharge the sureties on the said recognizance, and as decisive evidence in favor of the defendant, and to bar the plaintiff of its said action.

But the said court then and there refused so to hold, and decided

and held that the said several matters were not sufficient to bar the plaintiff of its said action.

To which rulings and decision of the court the defendant, by his counsel, then and there duly excepted.

The defendant, by his counsel, contended and requested the court to hold, that the order of the circuit court, made December 10,
100 1856, that said Limantour be held to bail in $30,000, on the first indictment for alleged uttering of a false writing, &c., not having been vacated or in any way modified at the time of making the subsequent order of the same court, February 4, 1857, that he be held to bail in one sum of $35,000 under both indictments, and the recognizance sued on having been taken under this last order, was invalid and void.

But the court refused so to hold; to which refusal the defendant, by his counsel, then and there duly excepted.

The defendant, by his counsel, further insisted and requested the court to hold, that under the said stipulation and order of August 24th, 1857, the trial of the said criminal cases, or either of
101 them, could not be brought on until after the decrees of the district court in the two civil cases had become final, either by the decision of the Supreme Court on appeal, or by lapse of the time for appeal; nor until a reasonable time had been allowed to said Limantour to procure his witnesses from Mexico; and the trial of said cases having been, by order made on March 26th, 1859, set for April 26th, 1859, said forfeiture was invalid on either or both of said grounds, and this action cannot be maintained.

But the court refused so to hold, but held, on the contrary,
102 that the forfeiture was seasonable in all respects; to which refusal and decision defendant, by his counsel, duly excepted.

And the said defendant, by his counsel, did then and there propose his aforesaid exceptions to the circuit judge, and request him to allow this bill of exceptions, which is done.

Signed and sealed at San Francisco, this 28th day of June, 1866.

[SEAL.] STEPHEN J. FIELD,
Associate Justice of U. S. Supreme Court,
and Presiding Judge of said Circuit Court.

103 Judge Field, of the United States circuit court, this morning rendered the following important decision in the suit of the United States *vs.* Michael Reese:

In December, 1856, Jose Y. Limantour was indicted by the grand jury of the circuit court of the United States for uttering and publishing as true, to the board of land commissioners created under the act of March 3, 1851, to ascertain and settle private land claims in the State of California, a false writing, purporting to be a grant of certain described lands from the Mexican government, with intent to defraud the United States, knowing the same to be false. To this indictment Limantour appeared and pleaded not guilty. He was then admitted to bail on motion of his counsel, the amount being fixed at $30,000.

Soon after the issue was thus joined, a motion was made on the

part of the United States to set the case for trial early in January, 1857. This motion was resisted, and at the same time application was made on the part of Limantour for a continuance of the cause, and in support of the application his affidavit was read, in which he asserted the genuineness of the grant alleged by the United States to have been forged; and that it was made at the time and by the officers as averred by him. For alleged perjury in making this affidavit the grand jury soon afterwards found a second indictment against him. To this indictment he also appeared and pleaded not guilty, and upon the motion of his counsel was admitted to bail, its amount being fixed at $5,000.

By order of the court the recognizance of bail was taken in one instrument, the obligation of the sureties being the amount required in both cases. The defendant, Michael Reese, and one Manuel Castro became the sureties of Limantour, binding themselves jointly and severally in the sum designated. It is upon this recognizance that the present action is brought. It recites the finding and presentment of the two indictments, the commitment of the defendant thereon, and the order of the court for his discharge on furnishing the required bail, and is conditioned that the defendant shall personally appear at the next term of the court, and at any subsequent term thereafter, "to answer all such matters and things as shall be objected against him," and to abide the order of the court, and not depart therefrom without leave first obtained. This recognizance is dated the 5th of February, 1857.

At the subsequent term of the circuit court in August of that year, the defendant appeared for trial in both cases, with witnesses in attendance from the city of Mexico. The district attorney thereupon moved for a postponement of the trials. At this time two cases of Limantour for land claimed under alleged Mexican grants were pending in the district court of the United States, on appeal from decrees of the land commissioners, by whom the claims had been confirmed. One of the cases was for a claim under the alleged forged grant. The witnesses in attendance were persons who had been brought from Mexico to testify in the land cases. It was therefore stipulated between the counsel of the parties: on the one side, that the postponement desired by the government should be assented to—and on the other side, that neither of the criminal actions should be brought to trial until after final decrees had been rendered in the two land cases by the district court; and if both or either of the decrees were in favor of the claimant, the criminal actions should be dismissed by the United States; but if the decrees were adverse to the claimant, reasonable time should be given him to prepare for the trial of the criminal actions, and to procure the attendance of such of his witnesses as resided without the State of California. The stipulation was entered on the minutes of the court, and the postponement desired was granted in accordance with its terms.

In December, 1858, the district court, by its decrees, rejected the claims of Limantour in the land cases; and soon afterwards the district attorney moved that the criminal actions be set for trial. Af-

ter repeated adjournments, the motion was finally argued and decided in March, 1859, and the trials directed for the 25th of April following. On the latter day the two cases were called, but Limantour did not answer to the call in either of them, and the recognizance of his bail was ordered to be forfeited.

As a defence to the action, the defendant relies upon several grounds, the principal of which are:

First. That the acts charged in the two indictments did not, at the time of their alleged commission, constitute any offence under the laws of the United States; and as a consequence, that the indictments and all proceedings thereunder, including the requiring of bail for the appearance of the defendant, were void.

Second. That if the indictment and proceedings thereunder were not void, the stipulation of August, 1857, for a postponement of the trial, released the sureties from liability on their recognizance; and

Third. That the recognizance was void in embracing the amount required as bail upon both indictments.

The act charged in the first indictment, the uttering and publishing as true the alleged forged grant, were undoubtedly deemed to all within the class of offences defined by the first section of the act of Congress of March 3, 1823, "for the punishment of frauds committed on the government of the United States," and not under the act of March 3, 1825, as supposed by the counsel of the defendant. That section provides that "if any person or persons shall falsely make, alter, forge or counterfeit; or cause or procure to be falsely made, altered, forged, or counterfeited; or willingly aid or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, or other writing, for the purpose of obtaining or receiving, or of enabling any other person or persons, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum or sums of money; or shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate receipt, or other writing, as aforesaid, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the government of the United States, any deed, power of attorney, order, certificate, receipt, or other writing, in support, or in relation to, any count or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, every such person shall be deemed and adjudged guilty of felony; and being thereof dulye onvicted, shall be sentenced to be imprisoned, and kept at hard labor, for a period not less than one year, nor more than ten years, or shall be imprisoned not exceeding five years, and fined not exceeding $1,000."—(3 Statutes at Large, p. 711.)

104 The indictment uses the language of the second paragraph of this section, and was supposed to cover a case embraced by its terms. But we are of opinion that the section applies only to instru-

ments altered or forged for the purpose of obtaining moneys from the United States or their officers or agents. The first paragraph, covers the altering or forging of such instruments; the second paragraph the uttering or publishing them as true; and the third, their transmission or presentation to any office or officer of the government. Neither of them applies to an instrument forged for the purpose of obtaining a cession of land from the United States, or the confirmation of a claim to land alleged to have been granted by the Mexican government. There was no act of Congress which reached a case of this nature until the 18th of May, 1858, when an act was passed covering all cases of the altering or forging of documents or title papers, or uttering or publishing them as true for the purpose of establishing against the United States any claim to lands in California.—(11 Stat. at Large, 296.) That act was passed, it is believed, in consequence of the defects in existing legislation, suggested by this case of Limantour.

As to the second indictment there is much greater doubt whether the act alleged was not in fact at the time an offence under the laws of the United States. The objection is, that perjury cannot be affirmed of any testimony under oath upon an indictment for an act not constituting an offence, a position to which we are not prepared to yield our assent. The act of 1700 speaks of this offence as one which may be committed "in any suit, controversy, matter, or cause depending in any of the courts of the United States." We do not perceive how it can justly be said that the first indictment, with issue joined upon a plea of not guilty, did not constitute "a suit, controversy, matter, or cause depending."

But admitting that neither of the indictments allege acts constituting a public offence at the time of their commission, and that on a demurrer it would have been so held, the conclusion asserted by counsel does not follow, that all the subsequent proceedings of the court thereon, including the requiring of bail for the appearance of the defendant, were void.

The circuit court of the United States has cognizance of all crimes and offences cognizable under the authority of the United States.—(Judiciary act of 1709, sec. 11.) Its cognizance is exclusive in capital cases and concurrent with that of the district court in all other cases; and although there are no offences against the United States.—except such as are declared by specific enactment, and the criminal jurisdiction of the circuit court is in that respect limited, yet the court having jurisdiction to inquire into all public offences thus declared by law, must, as a necessary consequence, have jurisdiction to inquire into and pass upon all acts charged by competent authority to be public offences, and presented to it by such authority for its consideration. The authority provided by law for making such charges and presenting them to the court is the grand jury of the district. Its special duty is to inquire into all public offences against the United States committed or triable within the district, and to make true presentment of them to the court. The law does not assume the infallibility of this body, but provides for its possible er-

rors arising from imperfect knowledge of the statutes, or a misapprehension of their provisions, or ignorance of the established forms of procedure. It therefore subjects such action, whatever it may be, legal or illegal, valid or void, to the supervision and correction of the court. When its action is presented the jurisdiction of the court attaches to consider it, and to determine its validity. But the time and manner in which its validity shall be considered must depend upon the business pending and the established practice of the court. To the proper and efficient administration of justice there must be some order and system in all judicial proceedings. The party complained of has a right to be heard, and of securing the aid of counsel, if desired; time, therefore, to prepare his objections and procure his counsel must be afforded. If he claim that the action of the grand jury is illegal or void, he may ask to have the indictment quashed, or he may interpose a demurrer, or he may plead not guilty to the indictment and reserve his objections until the trial. But whether he pursue one course or the other, some time will be consumed, amounting in the great majority of cases to several days. If whilst these proceedings are going on, and the objections taken are under advisement, the defendant asks a discharge on bail, it is competent for the court to allow it, and the recognizance of bail given in such case will be a binding obligation, even though the indictment should eventually be adjudged void. The authority of the court to pass upon the validity of the action of the grand jury, and over the defendant whilst this validity is under consideration, is not an usurped authority, but an authority essential to the exercise of the general jurisdiction with which the court is clothed over all offences cognizable under the laws of the United States.

The error of the argument of the learned counsel of the defendant consists in not distinguishing between the action of a court invested with this general criminal jurisdiction, and the action of a court having no criminal jurisdiction whatever. In the one case authority to inquire whether an act alleged to be an offence be in truth such offence, is an essential accompaniment of the jurisdiction over the act when once it is adjudged to be an offence. In the other case the attempt to inquire into the matter at all would be an act of pure usurpation. The argument of the counsel would be good if applied to criminal proceedings commenced in a probate court of the State, that court having no criminal jurisdiction whatever. If it were good when applied to criminal proceedings in the circuit court, such proceedings would be a constant source of apprehension to the officers of the court, and would often prove more injurious to them than to the defendant himself. And this singular result would follow: if the court should refuse to look into the indictment and to pass upon its validity, the judges would be justly censurable for neglect of duty; but if the court detained the defendant in custody whilst considering its validity, the judges would be liable to an action for false imprisonment if their ultimate decision should be that the indictment was void.

It follows that the court had authority to require bail of Limantour;

and the recognizance in question is not void by reason of the insufficiency of the acts charged in the indictments. The condition annexed to the instrument is usual in such cases; and is not fulfilled unless the defendant personally appear as provided; unless he answer all matters then objected against him; unless he abide the order of the court;
105 and unless he remain before the court until permitted to depart. A compliance with one or more of these provisions will not suffice; he must comply with all of them. It often happens that the indictment under which an arrest is ordered is set aside, or a nolle prosequi is entered, or a verdict of acquittal after trial is had, and yet in the progress of the case such evidence is developed as shows that an offence has been committed by the defendant which requires other and different proceedings. The condition of the recognizance is intended to meet all possible disclosures of crime, and to secure the appearance of the defendant to answer "all matters and things which may be objected against him;" and therefore he is not allowed to depart without leave of the court, although the particular ground of his original arrest may be removed.—(Hawkins, book 2, ch. 15, sec. 84; State *vs.* Stout, 6 Halst., 121; Champlain *vs.* The People, 2 Coms., 82.) In this case the defendant, even if he had succeeded in obtaining a discharge from arrest upon the indictments, might perhaps have been detained to answer a charge for perjury or subornation of perjury in the land cases before the board of commissioners or the district court.

The stipulation of August, 1857, as observed by counsel, is most unusual in all its features, and yet under the circumstances may be justified. The grant alleged to be forged, and in swearing to the genuineness of which the forgery was charged, had been adjudged valid by the board of land commissioners, and the appeal from its decree was at the time pending undetermined. The postponement of the trial until this appeal was disposed of was a very proper exercise of the power of the court, provided the accused waived his right to a speedy trial and assented to the postponement. In this act we do not perceive any ground upon which the bail can claim exemption from liability on their recognizance. They were not bound to continue as sureties any longer from this circumstance than without it. They could at any time afterwards have surrendered the defendant and been exonerated. In the theory of the law he was in their custody, as jailers of his own choosing, subject to be surrendered at any moment. If they failed to exercise their power over him they must bear the responsibility attached to the position they voluntarily assumed.

The objection that the decrees of the district court were not final at the time of the alleged forfeiture of the recognizance, because they were for five years subsequently subject to appeal to the Supreme Court, and to reversal by that tribunal, is untenable. The stipulation evidently had reference to the immediate action of the district court upon the appeals pending, and not to its possible ultimate action after the cases had been passed upon by the Supreme Court; nor did it contemplate a delay of five years from the entry of

the decrees before the trials should be had in case no appeal to that tribunal was taken.

The objection to the recognizance that it embraced the amount required as bail upon both indictments is equally untenable. The indictments constituted the occasion for the arrest of the defendant, but the recognizance was not that he should appear in court and *and* answer them, but that he should appear and answer "all matters and things" as might be objected against him. The fact that there were two indictments undoubtedly governed the court in fixing the amount of the bail; they constituted the moving cause, so to speak, of the action of the court; but they did not control the form of the recognizance, or determine the extent of the liability of the sureties. They are referred to in the instrument by way of recital to the conditions annexed, but in no respect qualify or restrain them.

We have given to the objections of the learned counsel of the defendant the most careful consideration, but are unable to perceive in them anything which will defeat a recovery by the plaintiffs. Judgment will therefore pass for the United States for the amount of the recognizance, namely, $35,000, and costs.

FIELD, *J.*

San Francisco, September 24, 1866.

106 The United States circuit court, district of California.

MICHAEL REESE, pl'ff in error,
vs.
THE UNITED STATES, def't in error.

I, George C. Gorham, clerk of the circuit court of the United States, district of California, do hereby certify that the foregoing one hundred and three pages contain a true, full, and correct copy and transcript of the record in the case in said court entitled The United States of America *vs.* Michael Reese, now remaining of record and on file in my office.

Witness my hand and the seal of said court, this 30th day of October, A. D. 1866.

[SEAL.] GEORGE C. GORHAM, *Clerk.*
By S. NEALL, *D. C.*

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

MICHAEL REESE, *Plaintiff in error*,
vs.
THE UNITED STATES. } No. 8.

In error to the Circuit Court of the United States for the District of California.

STATEMENT FOR THE UNITED STATES.

This is a writ of error to the circuit court of the United States for the District of California, in a suit brought to recover the sum of $35,000, with interest, claimed to be due the United States upon the forfeiture of a recognizance which was entered into by the plaintiff in error on the 5th of February, 1857, jointly and severally with another, as sureties, and one Jose Y. Limantour, as principal.

Two indictments had previously been found against the said Limantour by the grand jury of the circuit court aforesaid—one in December, 1856, for having uttered and published as true, before the board of commissioners appointed to ascertain and settle private land claims in California, under act of March 3, 1851, a certain false writing, with intent to defraud the United

States, knowing the same to be false; and the other, in January, 1857, for having, in a proceeding before said court on a motion for a continuance of his trial on the first mentioned indictment, committed perjury, in swearing to a certain false affidavit in writing, knowing the same to be false. He was arrested and brought before the said court on the former indictment, to which he pleaded not guilty, and was afterwards, to wit, on the 10th of December, 1856, admitted to bail by an order of the court in the sum of $30,000, for his appearance at any subsequent term of said court to be thereafter held, until duly discharged. To the second indictment he also appeared and pleaded not guilty; and by an order of the court, made February 4, 1857, in both said indictments, he was discharged on the above-mentioned recognizance, which was conditioned for his appearance "at the next regular term of the said circuit court, &c., and also at any subsequent term of said court, &c., then and there to answer all such matters and things as shall be objected against him, and to abide the order of the aforesaid court, and not to depart the said court without leave first obtained," &c.

It appears that the original complaint in the action on this recognizance was dated November 28, 1860, and that summons thereupon issued on the 30th of same month, which being duly served, the defendant below appeared, and put in a demurrer; but that afterwards, to wit, on the 23d of March, 1864, by leave of the court, plaintiffs below filed an amended complaint

and that again, on the 13th of July, 1865, agreeably to a stipulation in writing between counsel, another amended complaint was filed by them. (Printed Record, pp. 2–12.)

The second amended complaint averred the finding of the two indictments as aforesaid, the arrest and subsequent discharge of Limantour on the said recognizance, conditioned for his appearance as aforesaid, and further, that at the then next regular term of the said circuit court, begun and holden on the first Monday of July, 1857, the said Limantour, though solemnly called, did not appear according to the condition of said recognizance, &c.; and that afterwards, to wit, on the 25th of April, 1859, at a regular term of said court, begun and holden on Monday the 3d of June, 1859, the said Limantour, although solemny called, did not appear, &c., and that thereupon said court, at the term last aforesaid, made an order forfeiting and estreating said recognizance, whereby an action hath accrued &c., (ibid, pp. 10–12.)

To this the defendant demurred; but upon afterwards pleading the general issue, it was agreed between the counsel of the respective parties that he might, under such plea, give evidence on the trial of any matter of defence which he might lawfully have, or raise any issue or question as to matter of fact or law, &c., as fully as if the same had been taken advantage of by special plea or by demurrer, &c. (*Ibid.*, p. 13.)

Subsequently, however, it was stipulated between counsel that a jury be waived, and that the case be tried

by the court; and upon the cause being afterwards submitted to the court on the testimony produced, judgment was rendered for the plaintiffs. (*Ibid.*, pp. 14, 15.)

A bill of exceptions was tendered by the defendant and allowed by the court. The exceptions are, in part, against the rulings of the court in receiving in evidence the said recognizance and the orders and proceedings of the court made and had thereupon February 4, 1857, and April 25, 1859, on the following grounds: That the recognizance on its face was taken under two indictments found by the grand jury of the United States for said district, the first of which was for an act which, at the time of the alleged commission thereof, or of the finding of said indictment, was not a crime or offence against the United States; and the second of which was for an alleged perjury, committed in an action or an indictment for an act which, at the time of the alleged commission thereof, was not within the jurisdiction of the said grand jury to inquire into. (*Ibid*, pp. 18, 19.)

The bill further sets forth, that the defendant having requested the court to hold as to each and both the said indictments that the acts therein charged were not, at the date of their alleged commission, a crime or offence within the jurisdiction of the said grand jury to inquire into, &c.; that said acts were not a crime or offence within the jurisdiction of said circuit court to try, &c.; that the alleged perjury was committed in an action in said court upon said first indictment, which said

court had no jurisdiction to try, &c.; and that, therefore, on all these grounds the said recognizance was invalid and insufficient to maintain said action—the said court notwithstanding held that the said recognizance was good and sufficient; to all which the defendant excepted. (*Ibid*, pp. 20, 21.)

It also sets forth that the defendant then put in evidence certain orders and proceedings of said circuit court hereinbefore referred to, and also the following: A stipulation, dated August 24, 1857, between the counsel of the respective parties, for a postponement of the trials on the above-mentioned indictments until after final decrees were rendered by the district court of the United States for the northern district of California, in two cases then pending therein on appeal from the board of land commissioners aforesaid, in each of which the United States were appellants against the said Limantour, appellee; and in case both or either of said decrees should be in favor of Limantour, then it was agreed that the criminal prosecutions should be forthwith dismissed; and in case said decrees should be against him, then reasonable time was to be given him to prepare for trial, &c.; in accordance with the terms of which stipulation, the trial of the two indictments was postponed by order of the court. A subsequent order of the same court, made on motion of the United States attorney, setting the said causes for trial on the 25th of April, 1859. Proof that the decrees of the aforesaid district court, in the two civil cases referred

to, were rendered against Limantour, on the 19th of November, 1858. Testimony of a witness that when the stipulation for postponement of the trials was made in August, 1857, Limantour was present in court with his witnesses from Mexico, and ready and anxious for trial; that the district attorney urged a postponement; that the witnesses were obliged to return to Mexico at once; that it was understood by all parties that if the stipulation should be made, Limantour and his witnesses would return to Mexico and remain there until the said civil cases were finally disposed of, &c.; and that the sureties on the recognizance had nothing to do with the stipulation in any way, and knew nothing of it. The defendant then requested the court to hold that the several matters so produced and given in evidence, with the testimony of said witness, were sufficient to discharge the sureties in said recognizance and to bar the plaintiff's action; but the court held the contrary; to which ruling the defendant excepted, (*Ibid* 21–25.)

The defendant then requested the court to hold that the order of the circuit court of December 10, 1856, admitting Limantour to bail in $30,000 on the first indictment, not having been vacated or modified at the time of making the subsequent order of February 4, 1857, that he be held to bail in one sum of $35,000 under both indictments, the recognizance sued on, having been taken under this last order, was invalid; but the court refused to so hold, to which the defendant excepted. (*Ibid.*, 25.)

The defendant further requested the court to hold that, under the stipulation and order of August 24, 1857, the trial of the said criminal cases could not be brought until after the decrees of the district court had become final, either by the decision of the Supreme Court on appeal, or by lapse of the time for appeal, nor until a reasonable time had been allowed Limantour to procure his witnesses from Mexico, and the trial of said cases having been set for April 26, 1859, said forfeiture was invalid on either of said grounds, &c.; but the court refused to so hold, and held, on the contrary, that the ferfeiture was reasonable in all respects; to which the defendant excepted. (*Ibid.*, 25.)

In this case the United States rely, in asking the court to affirm the judgment below, upon the conclusive and able opinion of the learned judge of the circuit court, which appears in the printed record, from pages 25 to 31, and in addition to the authorities there mentioned the following cases are cited: The People *vs.* Millis, 5 Barb., 515; Gildersleve *vs.* People, 10 Barb., 40; Mix *vs.* The People, 26 Ill., 32.

E. R. HOAR.
Attorney General.
W. A. FIELD,
Assistant Attorney General.

Supreme Court of the United States.

MICHAEL REESE, Plaintiff in Error,

vs.

THE UNITED STATES.

Brief and Points of Plaintiff in Error.

In error to the circuit court of the United States for the district of California.

ABSTRACT OF THE CASE.

In December, 1856, Jose Y. Limantour was indicted at San Francisco by the grand jury of the circuit court of the United States, for the supposed offense against the United States of "uttering and publishing as true, to the board of "land commissioners created under the act of March 3, 1851, "to ascertain and settle private land claims in the State of "California, a false writing, purporting to be a grant of cer- "tain described lands in California from the Mexican govern- "ment, with intent to defraud the United States, knowing the "same to be false, contrary to the form of the statutes of the "United States," &c. (Trans., 78 to 81.)

To this indictment Limantour appeared and pleaded not guilty. He was then admitted to bail on motion of his counsel, the amount being fixed, by order of the court, at $30,000.

Soon after the issue was thus joined, a motion was made on the part of the United States to set the case for trial early in January, 1857. This motion was resisted, and at the same

time application was made on the part of Limantour for a continuance of the cause, and in support of the application his affidavit was read, which was to the effect, "that the al-"leged title-papers presented by him before the board of "land commissioners were genuine and what they purported "to be." (Trans., 82.)

For alleged perjury in this affidavit, the grand jury found a second indictment against Limantour on January 17, 1857. (Trans., 81.) This indictment alleges very fully that the alleged perjury was committed in the case on the other indictment. (Trans., 82.)

Upon the second indictment Limantour was arrested and brought into court to answer the same.

Thereupon, by order of the court, he was again held to bail in one recognizance on both indictments in $35,000, with two sureties, of whom the plaintiff in error, Reese, was one and Manuel Castro was the other, bound jointly and severally. (Trans., 41 to 44, 70.) Upon this recognizance the present action is brought, and in the last amended complaint it, as well as the two indictments, is referred to and made a part of the complaint. (Trans., 39 to 44.) It is dated February 5, 1857, and is set out in the bill of exceptions. (Trans., 63 to 70.) It recites very fully the finding and presentment of the two indictments and their tenor, the commitment of the defendant thereon, and the order of the court for his discharge on furnishing the required bail, and is conditioned that the defendant "shall personally appear at the next term of the "court, and at any subsequent term thereafter, to answer all "such matters and things as shall be objected against him, "and to abide the order of the court, and not depart there-"from without leave first obtained," &c.

At the subsequent term of the circuit court, in August of the same year, 1857, the defendant, Limantour, appeared in court in both cases, (under the two indictments,) ready and pressing for trial, and with his witnesses in attendance, for whom he had gone to Mexico. The United States district

attorney was not ready, and urged a postponement of the trial.

At this time two cases of Limantour for land claimed under alleged Mexican grants were pending in the district court of the United States, on appeal from decrees of the land commissioners by whom the claims had been confirmed. One of the cases was for a claim under the alleged forged grant.

The witnesses of Limantour from Mexico were obliged to return there without delay. The postponement required by the district attorney was finally agreed to, and a stipulation in writing was made between the parties, placed upon the minutes, and an order of court for a postponement according to the terms of the stipulation was made and entered. (Trans., 96, 97; 89 to 92.)

By this stipulation and order it was provided on the one side that the application of the United States for a general postponement was granted; and, on the other side, that neither of the criminal actions should be brought to trial until after final decrees had been rendered in the two land cases of Limantour by the district court; and, if both or either of the decrees were in favor of him, the criminal actions should be dismissed by the United States; but, if the decrees were adverse to him, reasonable time should be given him to prepare for the trial of the criminal actions, and to procure the attendance of such of his witnesses as resided without the State of California.

It was fully understood by all parties, that if the stipulation should be made, Limantour and his witnesses would return to Mexico, and remain there until the civil cases in the United States district court were finally disposed of, and that Limantour should afterwards have time enough allowed him to notify and get his witnesses, and return with them to San Francisco. (Trans., 96 to 98.)

The result was, that the witnesses of Limantour returned at once to Mexico, and after two or three months, during

which nothing was done, he followed them, and never returned to California. (Trans., 96 to 98.)

The sureties on the recognizance had nothing to do with the stipulation in any way, and knew nothing of it. (Trans., 98.)

On November 19, 1858, the district court, in both the land cases of Limantour before it, rejected his claims. Soon afterwards the district attorney took proceedings to have the criminal actions set for trial. After many adjournments, the motion for the purpose was finally submitted to the court on March 9, 1859, and on the 26th of the same month both actions were set for trial on April 25, 1859. On that day they were called, and Limantour was also called, but did not appear, and an order was entered forfeiting the recognizance of his bail.

In the last amended complaint filed in this action the two indictments and the recognizance are referred to and made a part thereof. (Trans., 38 to 47.)

The defendant below, Reese, pleaded the general issue, there being a stipulation allowing him, on the trial, to prove any matter of defense, or to raise any issue of law, as fully as though the same had been pleaded. (Trans., 52, 53.)

The parties having, by written stipulation, waived a jury, the case was tried by the court, (Mr. Justice Field,) which found the sum of $35,000 due by the defendant, Reese, on the recognizance, and ordered judgment for the plaintiff for that amount, with costs: and judgment was entered accordingly.

Thereupon the defendant's bill of exceptions was allowed, and also his writ of error.

Several grounds of defense on matters of law were relied on below, and are presented in the bill of exceptions. (Trans., 63 to 102.) Some of them will be argued in the following pages.

The course of the argument will be to show:

1. That the recognizance was invalid and void, and insufficient to support the action; and

2. That if valid, the sureties were discharged by matter subsequent, arising out of the stipulation and proceedings connected therewith between their principal, Limantour, and the United States, the plaintiff below, without their knowledge or consent.

POINTS FOR ARGUMENT.

FIRST POINT. The recognizance sued on was invalid and void, having been taken under two indictments of the grand jury of the United States for the district of California, which were void for want of jurisdiction, because the acts which they charged as criminal were not offenses against the United States, and were not within their cognizance or that of any criminal jurisdiction of the United States.

I.

1. The plaintiff's cause of action is founded on a recognizance of bail taken and of record in the circuit court of the United States for the district of California, under two indictments previously found by the United States grand jury of the district; and which are referred to and made a part of the recognizance and of the complaint in the action.

2. This, therefore, is a case in which the proceedings in those criminal causes are brought in question in another action in which a right claimed depends on their validity.

3. In every such case, the jurisdiction of the court or body exercising authority in such proceedings may be collaterally inquired into. This rule is without exception.

   Elliott *vs.* Piersol, 1 Pet., 340–341.
   Rose *vs.* Himely, 4 Cranch, 268–269.
   Hickey's Lessee *vs.* Stewart, 3 How., 762, and cases cited.

Williamson *vs.* Berry, 8 How., 540–541, citing many cases.
Wilcox *vs.* Jackson, 13 Pet., 511, approving Elliott *vs.* Piersol.
Shriver *vs.* Lapier, 2 How., 60.
Latham *vs.* Edgerton, 9 Cow., 230.
Borden *vs.* Fitch, 15 J. R., 141.

4. In this respect there is no distinction as between superior and inferior courts. The only distinction is as to the mode of the inquiry and the burden of the proof. As to superior courts, the jurisdiction is presumed, unless the contrary appears. As to inferior courts, it must affirmatively be shown; usually on the face of the record.

Peacock *vs.* Bell, 1 Williams' Saunders, 74, c. 75.

5. So there is no distinction between superior and inferior courts as to the effect of the existence of jurisdiction or the want of it, on their proceedings, orders, judgments, &c., whenever collaterally brought in question.

6. The jurisdiction once shown or admitted, their proceedings are equally conclusive against all collateral assault.

7. *E converso*, in the absence of jurisdiction their proceedings are equally void, and nullities *ab initio* to all intents and purposes. There is no middle ground.

10 Peters, *475.

8. This nullity, resulting from the want of jurisdiction, applies as absolutely to the highest court as to the lowest.

Thus, it has been declared of the Supreme Court of the United States by itself in the most emphatic terms.

Rhode Island *vs.* Massachusetts, 12 Peters, *719–720. "As this court is one of limited and special original ju- "risdiction, its action must be confined to the particu- "lar cases, controversies, and parties over which the "constitution and laws have authorized it to act. Any "proceeding without the limits prescribed is *coram* "*non judice*, and its action a nullity." (10 Peters, 474; S. P., 4 Russell, 415.) "And whether the want or "excess of power is objected by a party, or is apparent "to the court, it must surcease its action, or proceed "extra judicially."

Voorhees *vs.* United States Bank, 10 Peters, 474: "The "only difference in this respect between this and any "other court is, that no court can revise our proceed- "ings; but that difference disappears after the time "prescribed for a writ of error or appeal to revise "those of an inferior court of the United States or of "any State: they stand on the same footing in law. "The errors of the court do not impair their validity; "binding till reversed, any objection to their full effect "must go to the authority under which they have been "conducted. If not warranted by the constitution "or law of the land, our most solemn proceedings "can confer no right, which is denied to any judicial "act under color of law, which can properly be deemed "to have been done *coram non judice*, that is, by per- "sons assuming the judicial function in the given case "without lawful authority."

So, as to the English court of Common Pleas, declared by itself, through its greatest judge, in the leading English case on this subject of jurisdiction.

Case of the Marshalsea, 10 Coke, 76*a*: "When a court "has jurisdiction of the cause, and proceeds *inverso* "*ordine* or erroneously, the party who sues, or the "officer who executes the process, is not liable. But "when the court has not jurisdiction of the cause, "then the whole proceeding is *coram non judice*, and

"action will lie against them, &c. If the court has "not power and authority, their proceeding is *coram* "*non judice*, as if the court of common pleas holds plea "in an appeal of death, robbery, or any other appeal, "and the defendant is attainted, it is *coram non judice*."

The same doctrine is announced by Parke, B., delivering the opinion of the court on appeal, (the Exchequer ch.,) in the greatly considered case of Gosset *vs.* Howard, 10 Q. B., (E. C. L., 59,) 359–460, r sing the Q. B. below; the question being whether of the speaker of the House of Comm on its face or valid: "It is presumed, w "such writs as are actually issued by superior courts, "that they are duly issued, and in a case in which "they have jurisdiction, unless the contrary appears "on the face of them; as it would, for instance, if a "writ of *capias* for a criminal matter issued from the "common pleas, or a writ in a real action (before the "abolition of such remedies) from the king's bench, "or a real action, not in the crown's case in the ex- "chequer: in all which cases the want of jurisdiction "would appear. But writs issued by a superior court, "not appearing to be out of the scope of their juris- "diction, are valid," &c.

Also, in the following cases, the same rule is declared as to high, or even the highest, State courts, either in terms, or most effectively by holding the judgment, order, &c., of no value and void, even as evidence.

As to the court of chancery in Mississippi, though the highest court of original equity jurisdiction in that State.

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"tion was a mere usurpation of judicial power, and "the whole proceeding of the court void." (p. 762.)

As to the vice chancellor's court in New York and the superior court of the city of New York, both courts of superior, though limited jurisdiction:

Burckle *vs* Eckart, 3 Comstock, 132.
Kerr *vs.* Mount, 28 New York, 659.

As to the New York court of chancery, in the exercise of a statutory jurisdiction added to its original jurisdiction:

Rogers *vs.* Dill, 6 Hill, 415.
Williamson *vs.* Berry, 8 How., 541.

As to New York supreme court, (1783:)

Fisher *vs.* Harnden, 1 Paine C. C., 59.

As to circuit court of Kentucky sitting in chancery. Hollingsworth *vs.* Barbour, (4 Pet. *466, 475, 476.) A decree for the conveyance of lands held "void" for want of jurisdiction of the subject or the parties.

The general rule is tersely stated in Elliott *vs.* Piersol, (1 Peters, 340–341.) The judgments and orders "of a "court without jurisdiction are regarded as nullities. "They are not voidable, but simply void," &c.

And in 1 Smith's Leading Cases, p. 821, 848, the American editor (Hare) states the result of the authorities as follows:

"A judgment rendered without authority or jurisdiction, "or what comes to the same thing, which exceeds or "lies without the general jurisdiction of the tribunal "which renders it, is necessarily void, and may be "shown to be so in the course of any subsequent "or collateral proceeding. This rule applies to the "decisions of all courts, whether of inferior or superior "jurisdiction, because no authority which is derived

"from the law can pass beyond the boundaries which "the law assigns to it. A criminal information in the "court of common pleas, or a common recovery, or "writ of right in the king's bench, would be simply "void, as between the parties to the cause, and could "not even be pleaded as a justification for acts done "under them by the officers of the court."

* * * "A judgment manifestly rendered without "jurisdiction will be void, whatever may be the dig- "nity of the tribunal which pronounces it."

* * * "The result of the whole matter seems to be, "that the judgments of all courts are void in the ab- "sence of jurisdiction." (P. 848.)

9. In the case of a want of jurisdiction of the person the rule is, that the proceedings of any court, from the highest to the lowest, are a nullity.

Shelton *vs.* Tiffen, 6 How., 163, 186.
Starbuck *vs.* Murray, 5 Wend., 161.
Harris *vs.* Hardeman, 14 How., 338, 345.
1 Smith's Lead. Cases, 834, 835, 836, (ed. of 1855.)

10. Whether this defect is shown affirmatively upon the face of the record or by proof *dehors* the record.

1 Smith's Lead. Cases, 843, and cases cited.
McKee *vs.* McKee, 2 How., 231.
Hollingsworth *vs.* Barbour, 4 Peters, 466, 471, 475.
Gray *vs.* Larrimore, C. C. for California, per Field, J.
And the other cases cited in sec. 9, *supra*.

11. Even as to judgments, &c., of courts of another State, rendered upon constructive service, as by advertisement, though valid in the State where rendered.

The provision of the Constitution of the United States, Art. IV., § 1, it is held, does not protect such judgments.

Borden *vs.* Fitch, 15 J. R., 121, 139 to 145.

12. If utter nullity results from want of jurisdiction of the person, *a fortiori* from the want of it as to the subject-matter. Consent may cure the former defect, but not the latter.

13. It is no objection, as argued against us, to the foregoing propositions, that all courts, bodies, and officers, however inferior, exercising judicial authority, must have power, in every case, to inquire into the question of their jurisdiction in such case, whenever it is raised; and also to make certain orders, as for the punishment of contempts of their authority, &c.

14. These powers are *ex necessitate*, and are implied in every court, independently of any statute.

United States *v.* Hudson, 7 Cr., 34, *sub finem*.

The inquiry into the jurisdiction is an essential preliminary in every case, whenever the point is raised, to the exercise of jurisdiction by the decision of the cause on the issues involved, *i. e.*, upon the merits; or by any other judicial action, such as making an order or taking a proceeding which affects the merits, or any party to the cause in his person or property. To this latter jurisdiction the jurisdiction or authority to inquire is not only preliminary, but collateral.

The other power, to punish for contempt, &c., is inherent in every court, and is essential to the orderly administration of justice. It is totally independent of any cause pending, or of the question of jurisdiction or the rights of parties therein. It may as well be exerted over any stranger or spectator in the court-room as over a party to the cause.

It is otherwise, however, as to the right, if collaterally questioned, to make or enforce orders bearing directly upon the merits of the action, or affecting the property or person of a party.

15. The "jurisdiction," the want of which makes void the proceedings, orders, judgments, in a cause, is the

power to hear and finally decide and dispose of the cause in that court, by a judgment on its merits, of law, or of fact, or both. (12 Pet., *718.) Not the "jurisdiction," or, more properly, the power collaterally and *ex necessitate*, to decide the question of law as to the existence of the jurisdiction in the court, either generally in any case, or under the circumstances of the particular case before it. This is simply the preliminary right vested equally and to the same extent, in the highest court and in the lowest judicial officer, to examine whether the case presented is within its or his jurisdiction.

16. The right of a court to exercise jurisdiction in a case depends upon two things: 1. Whether by the law of its constitution it is vested in any case, under any conditions, with jurisdiction over the subject-matter of the action or proceeding; and, 2. Whether in the particular case the conditions exist requisite to set in motion this jurisdiction, inherent, but before quiescent; as whether there is a proper subject-matter or cause of action to be alleged and proved for the court to act upon; proper parties, plaintiff and defendant, before the court, &c.

Whenever in the course of the proceedings a question is raised by plea or otherwise, as to either of these points, it becomes the right and duty of the court, in the exercise of the judicial function, to inquire into the question, preliminary to acting upon the merits, *i. e.*, the subject-matter of the controversy.

17. Regularly, upon the collateral inquiry, the affirmative decision of the court upon the latter point, as to whether the conditions exist, &c., is conclusive: always so far as the point turns upon questions of fact. The only distinction between superior and inferior courts is, that the former must exhibit a record showing allegations sufficient, if true, to support the decision.

It is otherwise as to an affirmative decision upon the

first point. Where, by the fundamental law of its existence, the court has not in any case the jurisdiction of the subject-matter of the action or proceeding, it cannot by any decision give itself jurisdiction. Especially where, as in the present case, involving the criminal jurisdiction of the circuit court, the court, as will presently be seen, is the creature of the statute: it is limited by the same statute as to its jurisdiction and the subject-matter of it.

Otherwise the court can, by its own act, give to itself a jurisdiction withheld by the authority which created it. Thus the limitations imposed by the legislative power are nullified, and the legal solecism results, that there is no difference in legal value between the proceedings of a court which on their face violate the law of its being, and those which observe it.

18. In this respect there is no distinction between courts, except that the presumptions in favor of the proceedings of superior courts compel much stronger proofs to overturn them. Even in the case of those courts, whenever it affirmatively appears from the record that the subject-matter of the action was one over which the court had no jurisdiction in any case, its order or judgment is and must be a nullity.

So controlling is this principle, that in some, perhaps, exceptional cases, falling within it, the want of jurisdiction, though turning upon questions of fact, may be shown by parol proof against the most sufficient record: As in the case of proceedings in probate for the administration of the estate of a living man. However regular these may be on their face, and though every jurisdictional fact, including that of death, is fully alleged and proved, and adjudged by the court, they may always be avoided collaterally by proof, that at the time the alleged decedent was in fact alive.

In other words, that the subject-matter of the proceedings, being the estate of a living man, was not one

within the jurisdiction of the court in any conceivable case.

II.

1. The circuit court of the United States, (the proceedings of which are here in question,) though a superior court, is one of limited jurisdiction, both as to persons and subject-matter.

2. Deriving its being and its jurisdiction wholly from the statutes of Congress, it is not vested with the general judicial power of the United States, but only with that portion which Congress has seen fit in those statutes to bestow. The residue of the power is withheld as absolutely as if denied in terms.

Livingston *vs.* Van Ingen, 1 Paine C. C. 48–49, &c.

Ex parte Cabrera, 1 Wash., C. C. 235.

3. The distinction is between courts which draw their origin and their jurisdiction from the common law and those which derive both from the statute.

As to the former, their powers are coextensive with the common law, unless as limited by some statute. As to the latter, the statute which is the source of their authority is also the measure of it. This distinction is not only reasonable, but is recognized by the highest authority.

Ex parte Bollman, (4 Cranch, 93:) "Courts which originate in the common law possess a jurisdiction which must be regulated by that law until changed by some statute. But it is otherwise with courts established by written law. They cannot transcend the jurisdiction given by the law of their creation."

4. Another distinction is that existing between two classes of courts, both having their jurisdiction from the statute; but one class proceeding according to the common law, and the other class not according to it,

but in a special and summary manner. The former would be entitled to more favorable presumptions than the latter on the question of jurisdiction.

5. The circuit courts of the United States, though created by statute, and limited as to their jurisdiction, are superior courts, proceeding according to the course of the common law.

They are presumed, therefore, especially whenever the question arises collaterally, to have acted within their jurisdiction, and with regularity, until the contrary appears.

Hence, when collaterally questioned, their proceedings need not show jurisdiction on their face. Though they fail to show it, they are not therefore nullities. The jurisdiction will be presumed.

Turner *vs.* Bank of North America (4 Dall., 8, 11) to the contrary is probably no longer law.

6. It is otherwise where the record itself shows, affirmatively, want of jurisdiction, either of the persons or the subject-matter. As, where it shows affirmatively that the party against whom the judgment is rendered was never served or never appeared; or that the alleged cause of action was one of which the court had no jurisdiction.

In all such cases, and equally in both classes of cases, its judgment, so far as it affects the parties to the action, is a nullity.

1 Smith's Lead. Cases, 843, and cases cited.

7. In criminal cases the jurisdiction of the circuit courts is peculiarly a limited one; much more so than in cases of civil cognizance.

In the first place, the constitutional grant of power over the subject of crimes is primarily to Congress, and not to the judiciary, and is very qualified in its character. The constitutional provisions which are found in different portions of the constitution are confined

to specified classes of acts; and next to cases not specified, arising under laws passed in the execution of the powers granted by the Constitution.

See them stated: Wharton Crim. Law, 76.

In the next place it results that the circuit courts have no common law or implied jurisdiction of crimes.

Limited as is the grant of power in the Constitution to Congress, that body, as is well known, has by no means exhausted it. It has given no such general authority as to crimes to the judicial power of the United States. The entire jurisdiction is statutory in all its main parts. The criminal code of the United States is purely of statutory creation, and has no existence outside of the statute. No act, however criminal in itself or at common law, is a crime against the United States, unless some act of Congress has in terms declared it to be so. Otherwise it is no crime.

Nay, such is the peculiar limited nature of the criminal jurisdiction of the United States courts, that an act, though declared a crime against the United States by Congress, cannot form the subject-matter for the jurisdiction of those courts, unless and until Congress has also declared the punishment of the crime and the court by which it is to be tried.

United States *vs.* Hudson, 7 Cr., 32.
United States *vs.* Coolidge, 1 Wh., 416.
United States *vs.* Bevans, 3 Wh., 386, 387, 388.
Wharton Crim. Law, 75.

Thus, the statute creates and defines for the United States courts the crime, the forum, the penalty, leaving nothing whatever to be drawn by them from any other source of power except the forms of their practice and procedure.

8. The only criminal acts which Congress has brought within the jurisdiction of the federal courts divide themselves into two classes:

1. Acts made criminal by general statute, by reason of their locality within a fort, arsenal, &c., of the United States; or upon the high seas or any other waters out of the jurisdiction of the United States.
2. Acts expressly specified by particular statutes.

Wharton Crim. Law, 80.

The question is, do the acts set forth in the recognizance and the indictments in this case fall under either class, and which?

9. It was contended below for the defense, and was so held by Mr. Justice Field in his decision at the circuit, (Trans., 104, pp. 27, 28,) that the act charged against Limantour in the first indictment, and substantially recited in the recognizance—uttering and publishing as true to the board of land commissioners, to settle private land claims in California, a certain false writing, purporting to be a grant to him of land in California, &c., with intent to defraud the United States, knowing the same to be false, &c.—was not, at the date of the indictment and recognizance, an offense against the United States.

This is too obvious for much argument. The act does not fall under the first class of crimes, which refer themselves to locality; nor within the second class, because it is not specified in any statute. It was not at that date an act within the criminal jurisdiction of the circuit or any court of the United States, and was first brought within it by positive act of Congress, May 18, 1858.

11 Stats. at Large, 296.

10. On their face, therefore, the proceedings under the first indictment set forth affirmatively a case not within the criminal jurisdiction of the circuit court; consequently, a subject-matter not within its judicial capacity to act upon, so as to affect the defendant in person or property.

11. The objection goes to the jurisdiction. For though the facts alleged in an indictment, complaint, or affidavit, in a criminal case or proceeding in the circuit court, sufficiently show a crime *per se*, or at common law, yet the question, whether they should be adjudged to constitute a crime cognizable in or by the circuit court, is a very separate question, and is always one of jurisdiction. For, as we have seen, the authority to declare what shall be a crime within the jurisdiction of the court to try and punish, belongs solely to Congress, which alone declares the crime and its penalty, and appoints the court which is to have cognizance of it.

Hence, the circuit court is without jurisdiction to adjudge any act to be a crime, unless one which has been dealt with by the legislative power in the manner stated.

See United States *vs.* Irwin, 5 McLean, 179.

12. That the question is always one of jurisdiction, to be raised by objection to the jurisdiction of the court, is apparent from the uniform course of practice, argument, and decision in the reported cases.

United States *vs.* Hudson, 7 Cranch, 32.
United States *vs.* Bevans, 3 Wheat., 436, 339, 386, 387, 388, 391.
United States *vs.* Wiltberger, 4 Wheat., 76–77, 94, 105.
United States *vs.* Coolidge, 1 Gall., 488.
S. C., 1 Wheat., 415.

13. The objection of want of jurisdiction of the subject-matter may be taken in the case at any stage of it, in any court, *pendente lite*, before the final judgment.

If apparent on the record, it is taken generally by way of demurrer to the jurisdiction; and whenever well taken before the final judgment is fatal to the previous proceedings.

Such a record, whenever produced in another cause, is open to the same objection collaterally, and with the

like effect, except that the want of jurisdiction of a superior court must appear affirmatively on its record.

14. In the present controversy the want of jurisdiction of the subject-matter is shown affirmatively on the face of the proceedings. The objection might have been raised directly in the criminal cases, neither of which is yet in judgment. It may still be taken there should the defendant, Limantour, hereafter appear.

Whenever raised, there can be but one result. The objection must be sustained.

It follows, that the same objection may be made now in this action with the same effect; the record showing affirmatively a case out of the jurisdiction of the court.

III.

1. Thus far we have argued on the broad ground of the nullity of all proceedings, including even judgments, of a court acting without jurisdiction of the subject-matter.

In truth, our case does not oblige us to go to this length.

Neither of the criminal actions against Limantour has ever gone to judgment. Both were suspended by the indefinite continuance of them stipulated for between the United States district attorney and the attorneys of Limantour, and have so remained. During this continuance the latter left California, as it was understood he would, and has never since returned. The cases have remained in *statu quo*, ready to be called for trial whenever the defendant shall appear.

Not only has no judgment been rendered, closing up the controversy by adjudging the defendant guilty of a crime within the jurisdiction of the court to try and punish, but no express decision as to its jurisdiction has ever been rendered by it, the question never having been raised.

This case, therefore, is completely disembarrassed of all

questions as to the effect of a judgment of this court as a finality, adjudging the defendant guilty of a crime within its jurisdiction, or of any decision in the cause on demurrer or otherwise in favor of its own jurisdiction.

Indeed, the only exercise by the court of its judicial function is in the two orders to hold to bail: one in $30,000 on the first indictment, and another afterwards, while the former was in force, in $35,000, on both indictments.

In this important respect (as well as in others even more decisive) our case is quite unlike *Ex parte* Watkins, 3 Pet., 193, in which the court seems to have felt itself constrained to deny its own right to inquire by *habeas corpus* into a detention under a final judgment of the circuit court of the District of Columbia.

2. The circumstances of the present case, as just stated, are doubtless very material in our favor.

In Bollman and Swartwout's case, 4 Cr., 75 to 136, the prisoners B. and S. were in custody under a commitment by the circuit court of the District of Columbia on a charge of treason against the United States. Their petition for a *habeas corpus* was granted after much consideration, (p. 75–101,) and on the return of the writ before the Supreme Court, and full argument thereon, (pp. 108–124–125–137,) they were discharged, on the ground that the facts before the circuit court did not amount to the crime of treason within the jurisdiction of that court, (p. 135,) Judge Marshall rendering both decisions.

1 Curtis' Com., 259. *Ex parte* Burford, 3 Cr., 448–453.

Had Limantour, while in custody under the indictments here, applied for his release on *habeas corpus*, there is no doubt that the court must have granted his application, on the clear ground that the acts alleged against him in the indictments did not constitute a crime within the jurisdiction of the court.

Had his sureties surrendered him into custody at any time before the forfeiture of the recognizance, he could have made the same application with the same result.

In Bollman's case, the court looked into the question of the evidence on which the commitment was made by the circuit court, as well as into the question of the jurisdiction depending on the locality of the acts charged.

A fortiori, where the allegations of the indictment, though true, not merely fall short of proving the crime charged, but fail to show any crime within the criminal jurisdiction of the circuit court or any court of the United States.

3. We assume, with confidence, the principle of law, that if the record of the criminal proceedings is such as to entitle Limantour, at any stage before trial and final judgment, to his discharge from custody on *habeas corpus*, on the ground of a want of jurisdiction shown upon the face of such record, the same record remaining at that stage, whenever produced in another cause, may be assailed collaterally and overthrown on the same ground.

Were the record (thus affirming want of jurisdiction) that of an inferior court, it could most clearly be so assailed, though after judgment. The same rule must apply to the proceedings even of the most superior court before judgment final. Whether after it, it is not necessary to our case to contend.

Upon this ground it is that the original *mesne* process of all courts may be avoided collaterally for want of jurisdiction shown upon their face at any time before judgment.

Gosset *vs.* Howard, 10 Q. B., 453–454, quoted *supra*, p. 9.

IV.

On the other side, it was contended below that the circuit court, being a court of general and of final jurisdiction of all crimes against the United States, has full authority to decide in this or any case whether or not the criminal acts charged constitute a crime against the United States, and its decision that they do is conclusive everywhere. Or, at least, as held by Mr. Justice Field, in his decision below, (Trans., pp. 28, 29,) that the circuit court, having cognizance of all crimes and offenses cognizable under the authority of the United States, has jurisdiction to inquire into and pass upon all acts presented to it for its action as public offences by competent authority, such as the grand jury in this case; and, while engaged in this inquiry, may detain the person charged, or let him to bail.

These views will next be examined.

1. In the first place, correctly speaking, the circuit court is not "a court of general jurisdiction, in criminal "matters." Certainly not in the sense in which the phrase is applied to courts of common law origin, constitution, and authority. Of these it is said, that the necessary presumption is in favor of their jurisdiction in any given action or proceeding, according to the course of the common law; because, *prima facie*, every such action or proceeding must be within their jurisdiction, unless it be shown the jurisdiction is in some inferior court, and out of them.

12 Peters, *719–720.

Clearly, also, the distinction is radical, and it is fully recognized in the highest instance (*ibid*) between a superior court of jurisdiction as general as the common law, and a court, of whatever dignity, whose jurisdiction, created solely by statute under a special

constitutional power, is limited by it to certain specified subjects of jurisdiction; all others being as absolutely withheld as if they had been expressly prohibited.

2. In the next place, it is not a just statement of the law to say, that the circuit court has "a general jurisdiction of all crimes against the United States."

On the contrary, its jurisdiction is limited to those crimes which the statute has brought within its jurisdiction; by, 1, declaring the act to be a crime against the United States; 2, fixing the penalty; and, 3, nominating the circuit court as the court which shall have cognizance of it.

United States *vs.* Hudson, 7 Cr., 34.

All of these exertions of the legislative power must concur to bring the crime within the jurisdiction of the circuit court of the United States.

To declare the crime, for instance, is not alone sufficient.

The exact reverse of this is true as to a court of general common law jurisdiction. There, the rule is perfectly settled, that where an old offence is defined, or a new offence, or a new right is created by statute, without referring the cognizance of it to any specified court, the action may be brought in any court of common law jurisdiction.

So, even where a new remedy or penalty is given by statute for a wrong or offence already cognizable by the courts of general jurisdiction, these latter are not thereby ousted of their ancient jurisdiction, even though the action for the new remedy or penalty is limited by the statute to a particular court.

A better illustration could not be supplied of the radical distinction between courts of general common law jurisdiction and the circuit courts of the United States in their criminal jurisdiction, and also of the danger of applying to these latter the phrases, descriptive of power, applied in law language to the former,

and thus tacitly imputing to the latter all the power which those phrases import.

See Bollman's case, 4 Cr., as quoted, *supra*.

3. It is held in the decision below that the error of the defence "consists in not distinguishing between the "action of a court invested with this general criminal "jurisdiction" [of the circuit court] "and the action "of a court having no criminal jurisdiction whatever." (Trans., p. 29.)

The inference which is drawn from this distinction is, that the action which would be void in the case of the latter court would be valid in the case of the former court.

On the other hand, we contend, 1, that the circuit court, as just argued by us, is not a court of "general criminal jurisdiction" in the sense asserted; and, 2, we question the existence of such a distinction in this case.

One court, *e. g.*, the English common pleas, has no jurisdiction over crimes. It is prohibited from taking any cognizance of them.

Another court, *e. g.*, the United States circuit court, has a limited jurisdiction over them. That is, it may take cognizance of certain crimes, but is prohibited from taking cognizance of many more.

A third court, as the English exchequer, has jurisdiction of a certain class of real actions, namely, in crown cases; but has none of any others.

Both the first and the last of these courts, unlike our circuit courts, are courts of a general common law jurisdiction. Yet, in the great and leading cases of The Marshalsea, 10 Co., 76*a*, and Gosssett *v.* Howard, 10 Q. B., 359., *supra*, they are cited to illustrate the strict doctrine of jurisdiction; and it is held of them, that a proceeding by the C. B. to hold jurisdiction of a criminal case, and one by the exchequer to take jurisdiction of a real action between subjects, are equally each a nullity and void.

The truth is, there is no half-way house in this matter.

Either an act is valid or it is void. A nullity for want of jurisdiction admits of no qualification. See *supra*, pp. 7, &c.

The only distinction between a total and a partial denial of jurisdiction is as to the greater or less facility of ascertaining the question of law as to whether or not a given case is within the jurisdiction. By necessary presumption of law that question is always clear to courts and their officers. It is, even as to private individuals, whose ignorance of the law, however difficult, excuses them not, and who have every day to act at their peril in matters of property, liberty, and life.

3*a*. In the present case it must be conceded that the court had no jurisdiction of the subject-matter of the indictment or of the action founded thereon; the subject-matter being the charge that Limantour had "uttered and published" to the California land board a forged Mexican grant.

If there was no jurisdiction of the subject-matter, which is the principal thing, there could be none of any of its incidents, as the right to arrest or the right to hold to bail.

How can it be said that an officer may arrest a man on a writ which charges no offence known to the law, and hold him as his prisoner for a shorter or longer period, because a court is investigating the question of jurisdiction?

It may be the duty of the court in such a case to take a reasonable time for the investigation, and whatever the time consumed or the decision made, the court being superior, though limited, the judge cannot be questioned.

But as the officer who detains a man on such a writ does it at his peril, it is equally true that his prisoner has a right, if he can, to free himself of the unlawful detention, also at his peril.

The authorities cited in the decision below are Hawkins, book 2, ch. 15, sec. 84; 6 Halsted, 121; and 2 Com-

stock, 82. These are to the effect, that when the recognizance is generally to answer all matters and things which may be objected against the defendant, he cannot depart without leave of the court, though the ground of the original arrest may be removed. These authorities, on examination, must be regarded as applying to cases in courts of general jurisdiction, or where the cause of detention expressed was one within the jurisdiction of the court, requiring the recognizance. The case in 6 Halsted turns in great degree also on a peculiar practice as to transferring indictments or plaints out of one court into another. (138, 139, 140, 141.)

They cannot apply to a case like the present, where the particular offence recited by recognizance is one withheld from the jurisdiction.

This matter specified being void, that is, none at all, it gives no ground for any further detention to answer generally such matters as may be alleged against him.

This is in accordance with the general rule, that where the first arrest is void, it affords no ground for a further detention on a new charge.

Hooper *vs.* Lane, 8 Ellis & Bl., 1095, 1112, 1119, 1124, 1133, 1149, 1150.

Even to assert a right, a man cannot take advantage of his own wrong.

4. In the next place, the test as to jurisdiction is not as broad as is insisted on against us.

It is not whether the court has jurisdiction over a general class of cases, but simply whether it has jurisdiction of the subject-matter of the action or proceeding; *i. e.*, the subject-matter in controversy between the parties; in a criminal case, the *corpus delicti*, the substantial fact or facts of an offence committed.

This is the rule recognized by the highest authority.

Thompson *vs.* Tolmie, 2 Pet., 162: "When the proceedings are collaterally drawn in question, and it "appears on the face of them that the subject-matter "is within the jurisdiction of the court, they are void-"able only."

Voorhies *vs.* United States Bank, 10 Pet., 473, quoted *supra*, p. 8.

Rhode Island *vs.* Massachusetts, 12 Pet., 717: "Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit."

Rose *vs.* Himely, 4 Cr., 241.
Heath *vs.* Wells, 5 Pick., 144.
Cave *vs.* Mountain, 1 Man. & Gran., 257, (39 E. C. L., 435.)
Burckle *vs.* Eckhart, 3 Comst., 132.

5. Lastly, we are far from admitting, in the very broad sense claimed by the other side, that the circuit courts have full authority to decide in this, or any case, against all collateral inquiry, that the criminal acts charged constitute a crime against the United States.

On the contrary, we suppose two things to be clear: 1. That it belongs to the legislative power alone to declare what acts shall be criminal and within the jurisdiction of the United States courts; and, 2. That the United States courts have no jurisdiction to adjudge any act to be criminal which the statutes of Congress have not previously declared to be so, and which they have thereby withheld from their jurisdiction, as absolutely as if they had done so in terms.

6. Both indictments we contend are bad on their face; the first, because it shows an offence out of the jurisdiction of the court to try; and the second, as it must fall with the first, because it shows that the alleged perjury was committed in the cause under the other indictment, of which cause the court had no jurisdiction.

As to the first indictment, the acts charged against Limantour are most particularly set out. Nothing can be plainer than that they do not constitute the crime alleged, or any other crime against the United States. This is admitted by the passage of the subsequent act of Congress, May, 1858, covering the case. There is no room for cavil or question.

If there is any force in language, it is almost an absurdity in terms to say that the court has power to decide a case to be within its jurisdiction, which is so palpably without it.

As well say that upon an indictment for murder, alleged upon the record to have been committed on land, in the interior of Canada, the circuit court might first decide that the alleged facts constituted a crime against the United States of which it had jurisdiction, and then proceed to try the prisoner, convict, and hang him, all in a case of which it had and could have no color or pretence of jurisdiction.

The judicial murder of the individual would not be more enormous than the judicial absurdity of the entire proceeding.

7. As well say, that when on its face the record shows a case out of the jurisdiction by reason of the pecuniary amount being above or below the jurisdictional limitation, the court may, by virtue of its jurisdiction, reverse and contradict the figures on its own record; and may, for instance, by adjudging it, make $1,800 to be $2,000, on an appeal from the district court in admiralty to the circuit court.

8. Lastly, this point of difference between us and the plaintiff below is less important, since it is quite clear that the circuit court has never rendered any decision that the acts charged constituted any crime against the United States; has never directly or indirectly passed upon the question of its jurisdiction.

Hence, we repeat, this case is wholly free from any such decision, and from any embarrasment created thereby, and the question of jurisdiction is open to be taken and considered collaterally.

POINT SECOND: The indictment is in law the foundation of the criminal proceedings in this case; and, unless

it is within the jurisdiction of the grand jury, all proceedings based upon it must fall.

1. The recognizance sued on was taken under two indictments found by the grand jury of the United States in the circuit court.

This body had no authority to present or indict for acts not crimes or offences within the statutes of the United States. It is as much forbidden to do this as though it were so in terms.

An indictment which on its face purported to have been found, not by the grand jury, but by some unauthorized body unknown to the law, would be a nullity. So, an indictment, which on its face alleged a crime not known to the laws of the United States, and not within the cognizance of the grand jury, though purporting to have been found by a grand jury, would be equally a nullity.

The office of the grand jury of the United States is to inquire into such offences against the United States, within the district, as may be given them in charge, or may otherwise come to their knowledge "touching the present service."

In ascertaining the several offences into which they may inquire, their authority is limited by the jurisdiction of the United States courts which they are summoned to attend.

Where the court has no jurisdiction to try and decide, the grand jury have no jurisdiction to inquire or indict.

2. The indictment is the complaint presented to them for their inquiry and decision. If on its face it shows an offence of which the court, and *a fortiori* the grand jury, has no jurisdiction, though the latter should proceed and find the indictment, it is *coram non judice* and void, and no legal foundation for a criminal action.

United States *vs.* Hill, 1 Brock., 156, 157, 158, 159, 160.

3. The grand jury cannot claim for their proceedings the presumptions as to jurisdiction which protect those of the circuit court.

Their function is merely to inquire and to find, or the contrary, upon such indictments as may be laid before them, and which, though more solemn and formal, stand in lieu of the sworn complaints before the committing magistrates.

Their indictment found, and the arrest made thereon, are certainly entitled to no greater immunities than the commitment by the circuit court of the District of Columbia upon a sworn complaint, (as in Bollman's case, 4 Cranch, 75, above cited.)

Where an indictment or information is laid before a grand jury or a magistrate, the first duty of the one or the other is to ascertain from the face of the papers whether, assuming the facts charged to be true, they amount to an offence in law within their jurisdiction to inquire into, and to find or ignore the bill, or commit, or the contrary.

If on their face the facts do not amount to this, they have no jurisdiction to inquire, much less to find a bill or commit.

And if they should proceed to do so, their proceedings are simply void.

Regina *vs.* Bolton, 1 Q. B., (1 Ad. & E., N. S.,) 71.

4. If, on the contrary, the facts charged in the indictment or the information show a case of which the grand jury or the magistrate has jurisdiction, it is the duty of either to proceed to a conclusion, either by finding a bill or making the commitment. In that case, be the decision ever so wrong, or the proof ever so false, the judgment reached is valid till reversed elsewhere.

In every such case the jurisdiction depends upon the nature of the facts charged, not upon the truth or falsehood of those facts, or upon the sufficiency or insufficiency of the proof to establish the *corpus delicti*,

or subject-matter of crime, brought under investigation.

Regina *vs.* Bolton, 1 Adol. & Ellis, N. S., 66, 71–75.

Cave *vs.* Mountain, 1 Man. and Gr., 257.

5. Applying these principles to the present case, we insist, that on their face the facts charged did not amount in law to any offense within the jurisdiction of the grand jury to inquire into, much less to indict for.

And hence, that the indictments found by them were null and void, and furnished no basis for the prosecution or arrest of Limantour, which arrest was in like manner void, and there is no sort of doubt that he might on that ground have been released from it on *habeas corpus*.

Indeed, had the warrant set out the facts of the alleged offence in the words of the indictment, it would have been no protection to the officer who arrested him. This view must be conclusive. For, it is impossible that a showing of an alleged offence against the United States, which would not protect the officer who served the warrant, would suffice to give jurisdiction to the grand jury of the court in the criminal action.

THIRD POINT: The indictment for the alleged perjury, on its face, rests upon the first indictment, and must fall with it.

1. The facts of the alleged offence are set out in detail, and show that it was committed in the action on the first indictment.

That is, in a cause the subject-matter of which was not within the jurisdiction of the court.

The offence of perjury cannot be predicated of any oath taken in a cause of which the court had no jurisdiction.

United States *vs.* Clark, 1 Gall., 500.

Anon: 1 Wash., C. C., 89–91.
United States *vs.* Passmore, 4 Dall., 372.
Ewington's Case, 2 Moody Crim. Cases, 223.
Roscoe's Crim. Ev., 810.
2 Russell on Crimes, 597, 598, 599, Amer. ed., and cases cited in notes.
3 Archbold Cr. Pr. & Pl., 594, and cases cited.

2. The act of 1790, cited in the decision at the circuit, we contend does not save the indictment.

The language of the act is general, and we respectfully say should not be so construed as to change so greatly the settled law, that the crime of perjury cannot be predicated except of an oath taken before a lawful court or officer in a proceeding of which it or he has jurisdiction. The act was designed simply to assert that law, and to declare any false swearing in any suit, &c., pending in any United States court having jurisdiction, to be a crime. But for the statute, it would not be a crime within the criminal cognizance of the United States courts.

This view is confirmed by the entire passage in the act: "Any suit, controversy, matter, or cause, depending "in any court of the United States, or in any deposi- "tion taken pursuant to the laws of the United States," &c. And by the later act of 1825, which, and not the act of 1790, is doubtless the law of the subject as to all cases since, (United States *vs.* Nichols, 4 McLean, 23,) it is perjury to swear falsely "in any case, matter, "hearing, or other proceeding when an oath or affirm- "ation shall be required to be taken or administered "under or by any law or laws of the United States." (1 Brightly's Dig. Laws U. S., 213, § 62.) An oath cannot be said to be "required by any law of the United "States" in a case which is outside of the law, by being outside of the jurisdictional limits prescribed by law.

See United States *vs.* Babcock, 4 McLean, 113.

As well say that a man could be charged with obstruct-

ing the process of the law, who has resisted a writ void for want of jurisdiction.

Both are offences against public justice; and can only be committed in cases which themselves proceed according to law.

To this effect are the three cases first cited in the preceding section from the United States Reports.

FOURTH POINT: As the result of the foregoing principles and authorities, and also for defects specially affecting that form of obligation, the recognizance in this case was of no validity.

1. It was invalid, by reason of the want of jurisdiction shown on its face, and affecting the indictments and the action in which it was taken before the United States commissioner.

The cases are as numerous and as strong as can be found on any question in the law, in which recognizances put in suit have been held void for want of jurisdiction of the subject-matter of the plaint, action, or proceeding, in which they were taken; and this, equally, whether they were taken before a superior court or an inferior court or officer.

Covey *vs.* Noggle, 13 Barb., 331, 334, 335.
Harrington *vs.* Brown, 7 Pick., 233, 234.
Bridge *vs.* Ford, 4 Mass., 641, 643.
Chevey's case, 6 Mass., 348, 349; per Parsons, C. J.
Clark *vs.* Cleveland, 6 Hill, 344, 348.
3 J. J. Marsh., 642.
1 *Ib.*, 353.
Commonwealth *vs.* West, 1 Dana, 165.
Simpson *vs.* Commonwealth, 2 *Ib.*, 523.
McDonough *vs.* State, 19 Texas, 293.
Commonwealth *vs.* Canada, 13 Pick., 87, 88, 90.
People *vs.* Shaver, 4 Parker, 45, 53, 54.
11 Mass., 338.

Commonwealth *vs.* Otis, 16 *Ib.*, 199.
State *vs.* Lane, 33 Me., 538.
State *vs.* Smith, 2 Greenl., 62, 63.
Pick *vs.* Thompson, 5 Allen, 390.
Commonwealth *vs.* Collins, 11 Gray, 465.
Vose *vs.* Deane, 7 Mass., 280, 284.
People *vs.* Kane, 4 Den., 530, 544.

The doctrine has been enforced in the case of the recognizance of a witness.

People *vs.* Rundle, 6 Hill, 506.

So, even where the want of jurisdiction was personal to the magistrate before whom the action was pending; as where he was disqualified by interest.

Pearce *vs.* Attwood, 13 Mass., 324, 340.
Commonwealth *vs.* McLane, 4 Gray, 427.
Clark *vs.* Lamb, 2 Allen, 397.

The same doctrine is distinctly asserted or assumed in other cases, as of bail-bonds in civil cases. Between these and criminal recognizances there is no difference in principle. Each is an obligation by the sureties that the principal shall answer with his body.

Hall *vs.* Young, 3 Pick., 80: Bail-bond in civil suit against a consul. Had the want of jurisdiction appeared on the record, or on a plea to the jurisdiction, &c., the bail would be discharged.

Estwick *vs.* Cook, 2 Ld. Raymond, 1557: Suit on the bail-bond on a *capias* in the king's bench.

Jackson *vs.* Hunter, 6 T. R., 73.
Bryant *vs.* Clutton, 1 M. & W., *408.
Mattoon *vs.* Eder, 6 Cal., 57, 60, 61.

II.

Without reference to the defect in the indictments, the recognizance is void on its face.

1. It shows on its face that it was taken for an offense of which the court had no jurisdiction.

Daggett's Case, 16 Mass., 447, 448.
4 Mass., 642.
9 Mass., 520, 522, 524.
People *vs.* Kane, 4 Denio, 544, 545.
People *vs.* Koeber, 7 Hill, 42, 43.
Smith's Case, 2 Greenl., *62.
People *vs.* Rundle, 6 Hill, 506.
See to the same effect the cases cited *supra*, pp.

The practice is, that the recognizance should show, or at least state, a crime committed.
4 Den., 544, 545, and the other cases last cited.

Accord: Petersdorff Bail, 504, note *a*.
19 Pick., 139, 140.
2 Comst., 82, 83, 85.
10 Barb., 36.
17 Wend., 255.

The recognizance here undertakes to recite a charge within the jurisdiction of the court, but fails. This avoids it.
Bailey *vs.* State, 4 Tex., 417.

2. It also shows on its face that it was taken under two separate indictments and in two distinct actions. This is a wrong, both to the Government and the defendant. To the former, because one recovery for a single breach exhausts the recognizance, leaving no remedy for a breach by non-appearance under the other indictment. To the defendant, because he cannot be compelled to give bail on two or more indictments before he can be released on one of them. He has a right to his option, and he may choose to give bail on one, and test the validity of the other on *habeas corpus*.

Lastly. The recognizance is bad, because taken in $35,000, though the first order to let to bail on the first indictment was but for $30,000, and was in force, not vacated or set aside, when the record order was made. The latter remained inoperative; and the only author-

ity for the bail being the first order, the recognizance, being for an amount in excess of that by $5,000, was void. Being an entirety, it cannot be apportioned.

FIFTH POINT: Though the recognizance was, when taken, a valid obligation, yet the sureties were discharged by matter subsequently arising out of the written stipulation for a postponement of the criminal actions against their principal, Limantour, for a long and uncertain period, made, without their knowledge or privity in any way, between him and the United States, August 24, 1857, and then entered as an order of court; and by the circumstances connected with the same.

1. The facts of this peculiar transaction are undisputed. After Limantour was let to bail on the recognizance in suit, February 5, 1857, he went to Mexico for his witnesses; the charge against him being that he had uttered and published to the board of land commissioners a fraudulent grant of the Mexican government for land in California, with forged official seals, signatures, &c. He procured his witnesses, brought them to San Francisco, and was with them in court at its subsequent term, in August of the same year, ready, with his counsel, and anxious for the trial of the actions against him. His expenses, doubtless, had been large, and his witnesses could not wait in San Francisco, being obliged to return to Mexico at once.

The United States district attorney, however, was not ready, and pressed for a delay. This was finally assented to by Limantour's counsel, but upon terms, and the whole agreement was put into the form of a written stipulation between the parties to the actions, the United States and Limantour, an order of court to be entered accordingly. (Trans., 96 to 98.)

This whole proceeding is an important feature of the case, and we give it with the stipulation in full from the record. (Trans., 87 to 92.)

"At a special term, &c., on Monday, August 24, 1859.
87 Present: Hon. M. Hall McAlister, Hon. Ogden Hoffman.

Indictment for Forgery.

THE UNITED STATES OF AMERICA
vs.
JOSE Y. LIMANTOUR. } No. 12.

Indictment for Perjury.

THE UNITED STATES OF AMERICA
vs.
JOSE Y. LIMANTOUR. } No. 13.

And now, &c., come the United States district attorney, on behalf of the United States, and Messrs. Whitcomb,
88 Pringle, & Felton, and Hall McAllister, Esq., on behalf of the defendant, Jose Y. Limantour; and, on motion of the United States district attorney, and on filing the following stipulation, in words and figures to wit:

[Titles of both actions as above.]

It is hereby stipulated and agreed, by and between the undersigned, that the application for a postponement of
89 the trials of the above-entitled actions, to be this day made by the district attorney on behalf of the United States, be, and the same is hereby, consented to by the defendant. But this consent is based upon the distinct agreement that the trial of said actions, or of either of them, shall at no time hereafter be brought on until after final decrees have been rendered by the district court of the United States for the northern district of California, in two certain cases now pending in said district court on appeal from the board of United States land commissioners, and respectively
90 entitled "United States *vs.* Jose Y. Limantour, No. 424, and United States *vs.* Jose Y. Limantour, No. 429;" and in case both or either of said decrees should be in favor of the aforesaid claimant, Jose Y. Limantour, it is hereby distinctly agreed, that said two aforesaid criminal actions, viz: Nos. 12 and 13, shall be forthwith dismissed by the United States; and in case said decrees should be against said claim-

ant, then, and in that event, reasonable time is to be given to him, the said Jose Y. Limantour, to prepare for the trial of said criminal actions, Nos. 12 and 13, and to procure the attendance of such witnesses as reside without the 91 limits of the State of California.

It is further stipulated, that this agreement be entered upon the minutes of the aforesaid circuit court, as the condition of the above postponement.

P. DELLA TORRE,
United States Attorney.

WHITCOMB, PRINGLE, FELTON,
HALL MCALLISTER,
Attorneys for Defendant.

SAN FRANCISCO, *August* 24, 1857.

It is ordered by the court that the trial of the two causes aforesaid be postponed according to the terms of said stipulation."

2. Throughout, it was fully understood among the parties to the stipulation, that if it (the stipulation) should be entered into, Limantour and his witnesses would return to Mexico, and would remain there until the civil cases in the United States district court were finally disposed of; and, in case the criminal actions against him were to be brought on for trial, that Limantour should afterwards have time enough allowed him to notify and get his witnesses, and return with them to San Francisco. (Trans., 96 to 98.)

The sureties knew nothing of the stipulation, and had nothing whatever to do with it. The entire transaction was between the parties to the criminal actions, the United States and Limantour.

Upon the postponement of the cases, Limantour's witnesses returned at once to Mexico. After a delay of two or three months, Limantour, himself, followed them to Mexico, and never returned to California.

An important provision of the stipulation and order was, that if the criminal cases were to be tried, L. should have a reasonable time to prepare for the trial, and to procure the attendance of his witnesses from Mexico. The cases were set, however, on a notice

of thirty days; and when upon the day fixed for trial, April 25, 1859, he was called in court, he did not appear, and his recognizance was forfeited.

3. The sum of all these proceedings is obvious and decisive enough.

When Limantour was in court in August, 1857, ready and pressing for trial, he had fulfilled his obligations on the recognizance both to the Government and to his sureties. Had the trial gone on, the liability of his sureties would doubtless have ended there. Instead of this, the Government was opposed to going to trial, and stipulated with him for a postponement of uncertain duration, which proved to be for twenty months, and might as well have been twice or thrice as long. Thereupon he returned to Mexico, as it was understood and indeed quite certain he would do. The sureties knew nothing of the stipulation and had nothing to do with it. Then, while Limantour was still in Mexico, the Government succeeded, after the rejection of his claims by the district court, in having the criminal cases set for trial on April 25, 1859, by an order made March 26, 1859, a notice of just thirty days at San Francisco; giving Limantour, as "the reasonable time for procuring the attendance of his Mexican witnesses," provided in the stipulation, about nine or ten days in Mexico under the most favorable movements of the steamers. When he was called on the day set, he did not appear, and his recognizance was forfeited.

3*a*. As matter of law, the sureties were discharged by the transactions for the postponement to which they were no parties, and from which, as a natural sequence, the other results followed.

4. In virtue of the controlling principle of the law of surety, resulting from the intimate relation between the parties, the recognizance of bail in a criminal action or proceeding involves a privity of contract requiring perfect good faith between the three parties, the plaintiff, the defendant, and the sureties.

The defendant agrees with the plaintiff, and also with the sureties, that he will answer with his body, by appearing according to his bond. The plaintiff and defendant agree with the sureties, that they will make no new agreement and take no proceedings without their full knowledge and concurrence, which will materially change the original contract, by increasing or varying the risk of the sureties, or impairing their remedies, or in any other way altering their situation, whether injury results or not. The sureties, on their parts, agree, that these obligations of the plaintiff and the defendant respectively, being performed in perfect good faith, they will perform their obligation; otherwise they are not bound.

5. This is the general law of the subject as collected from the authorities and the principles they establish.

Rees *vs.* Berrington, 2 Ves., 54; 3 Lead. Cas. Eq., *817, 818; Eng. notes, *819, 822, 827; Amer. notes, 559, 559–560, and cases cited.

Theobald Princ. and Surety, secs. 152, 155, 159; (as to bail,) 220, 221, 227 to 230, 235 to 237, and numerous cases cited.

Burge Surety, 203–204, 205, 205–206, 206, 207, and cases cited.

6. It is not material whether inquiry results or not, nor though the surety be benefitted. He has a right to stand upon his contract.

Burge Surety, 205–206, and cases in note *c*.

Rees *vs.* Berrington, 3 L. Cas. Eq., *817, 818; Amer. notes, 560, 561, and cases cited.

The principle of this is, as stated by Loughborough, (Ld. Chan.) in Rees *vs.* Berrington, 2 Ves., 543: "It is the clearest and most evident equity not to carry on any transaction without the privity of him who must necessarily have a concern in every transaction with the principal debtor. You cannot keep him bound, and transact his affairs, (for they are as much

his as your own,) without consulting him. You must let him judge whether he will give that indulgence contrary to the nature of his engagement." Cited and approved in Rathbone *vs.* Warren, 10 J. R., 595. *A fortiori*, it is not necessary to show that the surety was damaged. It is enough if he might have been.

Bowmaker *vs.* Moore, 7 Price, 231, 232, and See Theobald Prin. and Sur., §§ 155, 156.

7. Indeed, the rule is, on principle, that the surety is discharged whenever the new agreement is made, and before any actual results.

3 Lead. Cas. Eq., Amer. notes, 550, and cases cited.

Bowmaker *vs.* Moore, 7 Price, 233.

8. By postponement the surety's remedy against the principal may become more uncertain.

Burge Surety, 205, and cases in note *a*.

Here the postponement was a very unusual one, out of the ordinary course of business, and uncertain and hazardous as to time. It proved to be for nearly two years, and it might have been for a much longer period.

This was, or might have been, prejudicial to the sureties, who were thus required to take the risk of the solvency of their principal for a much longer time.

Bowmaker *vs.* Moore, 7 Price, 233.

9. The decision of the circuit court is, that the sureties cannot claim a discharge, because at any time during the interval between the date of the stipulation and the forfeiture of the recognizance they might have surrendered their principal.

To this view we think there is a conclusive answer:

1. During that interval the plaintiff, by the stipulation, was disabled from retaking Limantour, and the rule appears to be, that as the right of the bail is merely

derivative, they cannot retake whenever the plaintiff cannot. This is decided or assumed in the English cases.

Theobald Principal and S., § 220, 221, 227 to 230, and the cases cited.

2. At all events, as a fact, it was not in the power of the bail to retake and surrender Limantour at any time; for the very sufficient reason, that he was not in the jurisdiction after the date of the stipulation and order, except for two or three months, at the end of which time he went to Mexico and stayed there.

It was not only understood that he was to go to Mexico with his witnesses, and remain there until the land cases in the district court were finally disposed of, (Trans. 96, 97.) He was allowed, and, indeed, required, to go there by the stipulation and order, which gave him "reasonable time to procure the attendance "of his witnesses without the State of California." (Trans., 91.) He had then just brought them with him from Mexico; and he was to find them there again.

Had the stipulation done nothing more than that it induced the principal to leave the State, the bail would have been exonorated.

Rathbone *vs.* Warren, 10 T. R., 595.

10. In the following cases, most of which have been already referred to, the sureties, under circumstances similar to those in this case, were held to be discharged.

Rathbone *vs.* Warren, 10 T. R., 586, 588, 589, 593, 594; and see Chancellor's opinion, 589.

Niblo *vs.* Clark, 3 Wend., 24, 26–27, 27.

S. C. on Error, 6 Wend., 236, 243, 245.

Bowmaker *vs.* Moore, 7 Price, 223, 227 to 230, 231 to 234.

S. C., 3 Price, 214.

King *vs.* Baldwin, 17 T. R., 391, 392; and see authorities cited *supra*, § 5, p. 41.

II.

If, however, the sureties were not discharged, as contended, then we say that this action must fail because the delay stipulated for had not expired when the forfeiture of the recognizance was made, April 25, 1859, or even when this action was commenced.

The stipulation is, that the criminal actions "shall at no "time hereafter be brought on until after final decrees "have been rendered by the district court of the "United States," &c., "in two certain cases now pend-"ing in said court on appeal," &c.

The decrees in the district court were rendered against Limantour in November, 1858, shortly before the forfeiture. But, though they were "final decrees" in that court for the purpose of an appeal, they were not so within the meaning of the stipulation, which evidently pointed to a decree that had become a finality in the district court, by lapse of the time allowed for appeal, or otherwise.

What was intended, was obviously a decree which, as between the United States and Limantour, should settle finally and conclusively the rights of the parties on the merits in the two land cases, in which the alleged crimes were committed by him, charged in the two indictments.

Certainly it could never be contended, had the decree in the district court gone in favor of Limantour, that at once, and without affording to the United States the opportunity allowed by law for review, he would be entitled to have the two criminal actions against him dismissed.

The converse of this is equally indisputable.

E. CASSERLY,
For Plaintiff in Error.

WASHINGTON, DECEMBER TERM, 1869.